SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BETTY BULLOCK,)
)
Plaintiff,)
)
vs.) Case No. BC 249171
)
PHILIP MORRIS INCORPORATED, a)
corporation; DUPAR'S RESTAURANT,)
a corporation; ROBINSON'S MAY,)
a corporation; HILTON HOTELS)
CORPORATION; STEVEN'S STEAK AND)
SEAFOOD HOUSE, a corporation;)
and DOES 4-100, Inclusive,)
)
Defendants.)
_____)

DEPOSITION OF JOHN S. HEKMAN, Ph.D., taken on behalf of Plaintiff, at 11755 Wilshire Boulevard, Suite 1170, Los Angeles, California 90025, commencing at 11:02 a.m., on Wednesday, May 22nd, 2002, before LINDA D. WHITE, C.S.R. NO. 12009, pursuant to Notice.

Reporter: LINDA D. WHITE, C.S.R. NO. 12009

APPEARANCES

FOR THE PLAINTIFFS:
LAW OFFICES OF MICHAEL J. PIUZE
BY: MICHAEL J. PIUZE, ESQUIRE
11755 Wilshire Boulevard
Suite 1170
Los Angeles, California 90025
(310) 312-1102

FOR THE DEFENDANT PHILIP MORRIS, INCORPORATED:
ARNOLD & PORTER
BY: THOMAS W. STOEVER, JR., ESQUIRE
370 Seventeenth Street
Suite 4500
Denver, Colorado 80202
(303) 863-2328

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of the Legacy Tobacco Documents Library (LTDL) at the University of California, San Francisco (UCSF) http://industrydocuments.ucsf.edu/docs/kfxl0001

INDEX

EXAMINATION BY		PAGE
MR. PIUZE		5

EXHIBITS

PLAINTIFF'S		PAGE
1	Curriculum Vitae of John S. Hekman	6
2	Notes	128
3	California Share of Adjusted Base Amounts dated July 31, 2001	134
4-A, B and C	Advertising and Marketing; Philip Morris' New Campaign Echoes Medical Experts dated October 13, 1999	142
6	Early Fall - September/October - Tobacco Scanner Trends dated November 27, 2000	146
5-A and B	Philip Morris' Estimated Profits from Plaintiff	165
7	Philip Morris Companies, Inc. 2001 Fact Book	171
8	* Videotape	178

* Exhibit 8 was retained by Mr. Piuze

I N D E X (Continued)

INFORMATION TO BE SUPPLIED

(None)

QUESTIONS INSTRUCTED NOT TO ANSWER

(None)

http://legacy.library.ucsf.edu/tid/vct07a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

LOS ANGELES, CALIFORNIA; WEDNESDAY, MAY 22, 2002
11:02 A.M.
* * *

DEPOSITION OF JOHN S. HEKMAN, Ph.D.
called as a witness, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PIUZE:

Q Tell me your name.
A John S. Hekman.
Q Occupation?
A Economist.
Q Where?
A Economic Analysis, LLC.
Q Where?
A In Century City, Los Angeles.
Q Do you have a C.V.?
A Yes. I brought one today.
Q Can I look at it, please.
A Here you are.
Q That is Exhibit 1.
(Whereupon Exhibit 1 was marked for identification.)

BY MR. PIUZE:

Q Is that up to date?
A Yes.
Q What does Economic Analysis, LLC do?
A Consulting and testimony in regulation and litigation.
Q Only?
A Consulting, yes.
Q Okay. So that's litigation only. Did I hear that right or wrong?
A Regulatory work. We do some merger and acquisition work and we do litigation work.
Q Okay. What's your position over there? You the boss?
A No. I'm one of five partners in the LLC.
Q What do you do over there? All of the above?
A Yes.
Q Okay. Could you break it down in percentages for me, please.
A Probably 80 percent of my work is litigation, 15 percent are regulatory things and 5 percent other, which would include merger and acquisition things, not litigation.
Q Please tell me about "regulatory." What do you mean when you use this shorthand?

A Doing projects for regulatory agencies or with regard to regulation matters that are not litigation.
Q Okay. Could you give me an example? How does an economist become involved in regulatory matters?

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

Impact the regulations?
A For example, an issue with F.E.R.C., the Federal Energy Regulatory Commission, having to do with estimating energy prices and other things, having to do with energy markets.
Q Where are you from?
A From -- meaning my origins?
Q Yes.
A I was raised in Chicago.
Q City?
A Oak Park, if you know that area.
Q Sure. Valparaiso?
A That's correct.
Q I've never seen that on a C.V. I went to Lake Forest College, which is sort of in the area. I think which actually plays Valparaiso in sports.
A And lost, I'm sure.
Q Undoubtedly. You could have played my junior high school in school and lost. No doubt about that.
You brought up in Oak Park?
A I was born in Michigan; we moved to the

Chicago area and went out in 1960 when I was 12.
Q You ever hear of something called the Emmaus Bible School?
A Yes. I heard of it.
Q In Oak Park. That's not exactly where I got my Ph.D., but I know it's there.
There are also some highly-placed members of the reputed Chicago crime syndicate that lived in Oak Park, weren't there?
A Indeed.
Q So how long have you been with Economic Analysis, LLC?
A I started with them in 1992, and then I left in '96 and worked at two other firms for about two years each. And then returned, I think, January of 2000.
Q How come you came back?
A Because the firm had grown bigger, had re-formed as an LLC and they made me a good offer to come back.
Q What were you doing in between?
A I worked two years at a litigation consulting group for a company called Altschuler, Melvoin and Glasser, which is now part of American Express, and then two years for the Law of Economist Groups.
Q Doing basically the same stuff you are doing

now?
A Yes.
Q Have you -- since 1992, you've been doing the same stuff, basically, what you're doing now, right?
A Yes.
Q And what about after you left -- well, let me withdraw that.
You were teaching at B.C. while you were still working on your Ph.D. at Chicago; is that right?
A Not really. I was just not technically finished when I left. So having my defense and then receiving my degree after I had left. But you're correct that I didn't receive my degree before I left

http://legacy.library.ucsf.edu/tid/vvc37a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

Chicago.
Q All right. I'm looking at the C.V., Page 2, at the academic institutions listed here that you were teaching.
What else were you doing, if anything, between '75 and '86, other than teaching?
A Well, I spent some time at Harvard as a Fellow at the Joint Center for Urban Economics.
Q So that means you were learning?
A No. I was doing research there and not teaching there.
Q Okay.

A I spent a year at the Boston Federal Reserve Bank doing research, writing papers, other things, but not teaching. And other than that, I was -- and all of that time I was on the faculty at B.C. from '75 to '81.
Q Okay. And then when you were down at Chapel Hill, teaching only?
A Well, I did consulting as well as teaching.
Q Okay. Tell me about that, please.
A The consulting was in the real estate area. We had a joint program between business schools and the School of Urban Planning, and we worked with developers, developing feasibility studies for development study, that sort of thing.
Q "We" is who?
A I and other faculty members at North Carolina.
Q Did you have your own little consulting company?
A No, we didn't. It was out of ad hoc basis.
Q Good. But the consulting you were talking about was private consulting?
A Yes.
Q Tell me a little bit about the research you did at Harvard.
A My area in graduate school and when I was in Boston was industrial location urban and regional

economics. And they wanted me to work on some projects in that area that led to some research.
One of the papers or a couple of the papers that I published were developed from the work that I did at Harvard on the product cycle and the textile industry and relating the product cycle to industry in New England, when it became the main theme of what I did there, and also at the Fed.
Q Same thing at the Fed?
A Yes. It really -- much of it related to the product cycle and what that meant for the past and the future of industry in New England.
Q The textile industry?
A All industry. But used the textile industry as an example.
Q The textile industry is going to follow the shoe industry into extinction, isn't it?
A Correct.
Q Okay. When did you first get involved with the tobacco industry as a consultant?
A Well, I'm not really involved with the tobacco industry. I was retained by Arnold & Porter

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Legacy Tobacco Documents Library
http://tobaccodocuments.org
http://www.industrydocuments.ucsf.edu/docs/kfxl0001

approximately December of last year. That would be my first involvement with anything having to do with the tobacco industry.

Q Okay. Were you retained by Arnold & Porter for this case?
A Yes.
Q Have you been retained by anyone for any other tobacco-related case since?
A No, I haven't.
Q Have you ever smoked?
A Yes.
Q Tell me a little bit about that. When did you start? When did you stop? How much did you smoke?
A I started smoking in college. Probably -- I don't think I ever smoked more than a half a pack a day. I quit after graduate school for several years, and then came back to having a few a day. That sort of thing. And then it varied again, up to maybe as much as a half a pack a day and quit again in 1991.
Q Why?
A Well, I always considered it a habit that was not healthful. And I always had the idea that I wasn't going to do it forever, and that was a good time to quit.
Q And by "not healthful," did you have any further discussions with yourself about not being healthful, or is that as far as it went?
A Well, lifelong I've been told that smoking can

cause lung cancer and "don't do it."
Q Did you believe it? Lifelong?
A Yes.
Q Why did you smoke?
A Because I felt that smoking at a low level wouldn't be too risky. I enjoyed it. And I always intended to quit before and not smoke my whole life.
Q What did you enjoy?
A Pardon me. What did I enjoy about it? It's really hard to say. I find it relaxing at times or it's good to go along with food and drink or after a meal. So I don't understand why it's enjoyable, but it was -- and also as a social thing.
Q After you quit -- let's back up a step. When, in college, did you start? Like a year. And when after grad school did you stop? And what year, so I can figure out how long you smoked.
A My freshman year in college was the fall of 1965. I can't really remember starting. I guess was my freshman year. So I would say '65 or '66. And I sort of recall that when I left graduate school, which was the fall of '75, I recall stopping at that time. So I think that's when it was. Probably fall of '75.
Q So we're talking in round numbers 10 years?
A I guess so.

Q And half a pack a day?
MR. STOEVER, JR.: Objection. That misstates his earlier testimony.
THE WITNESS: I would say varying, but up to a half

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of http://tobaccoindustrydocuments.ucsf.edu/docs/kfxl0001

a pack a day.
BY MR. PIUZE:
Q Maybe I misunderstood. I thought the first time around that had become your regular -- obviously, the first day you started smoking it was -- I assume it wasn't the half a pack a day. Out of those 10 years, would you say that for nine years it was half a pack a day? I don't care what your answer is, I'm trying to get the right history.
A I would say that it varied a lot because probably a half a pack a day in college and less than that in graduate school, because I never smoked in my home. I only did it studying or out at a restaurant or something like that.
Q What did you smoke?
A Various cigarettes. But at some point it was Marlboros.
Q And?
A And then at some point it was Marlboro Light.
Q Why did you go to Marlboro Light?
A Again, because of health reasons. I felt it

would be safer.
Q Did people in your household smoke when you were a kid?
A My two older sisters were quite a bit older than I am, smoked, and my mother smoked, like, two cigarettes a day her whole life, but I didn't know that when I was a kid. She concealed it from me until I was sometime in my teenage years.
Q Okay. Who was it that told you early on that smoking was unhealthful?
A My family.
Q Meaning your sisters too?
A My grandfather who lived with us was a physician. He certainly told us. Even though he smoked cigars, he told us that it was unhealthful. And my parents were very disapproving and told me they really hoped I wouldn't smoke.
Q Okay. When you -- why did you initially stop after graduate school, after approximately 10 years of smoking?
A I really don't know the reason. I remember thinking at the time that I stopped wanting to smoke and had no aftereffects at all of craving them. I really don't know why that was.
Q Okay. How long was it before you resumed?

A I don't recall, but I know that I was in Chapel Hill starting in '81, and I can remember having a few cigarettes sitting at my desk when I was at Chapel Hill. I don't remember smoking at B.C.; so it could be that it was when I moved to North Carolina.
Q It could be a five-year hiatus that you were not smoking at all?
A Could have been, yes.
Q And after messing around a little -- I forget your exact words; I'm not going to try restate them -- after a couple here or there, you started smoking a little more regularly again down at North Carolina; is that right or not right?

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf
Digitized by the Legacy Tobacco Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

A After which time?
Q Once you resumed down at North Carolina, the way I thought I heard you say it, you started with one or two a day sometimes, but after a while, you smoked a little more regularly again. Did I misunderstand that?
A Yeah. My remembrance, kind of, is fairly dim. But I think it was probably on the low side, four, five cigarettes a day and none on weekends. Because I was at home on the weekends, so it was only at my office. If it did increase, it would have been in California, maybe just before I quit. I think I was smoking a little bit more.

Q What made you decide to quit the second time?
A Well, as I said before, it had always been my plan to, you know, quit at some point.
Q Just one day you woke up and said, "This is it"?
A No. The specific reason was that the -- my second wife, when I met her, she didn't like smoking. I said, "Well, I better not smoke."
Q Okay. How many times have you met with people for the purpose of this litigation? Any people.
A I don't know. It's been sporadic since last December.
Q Well, let me have your best shot, please. Was it like one time or less than 10 times? You really like them and so you go to lunch with them once a week?
A I think the total must be around 10. In the neighborhood of 10.
Q Okay. Besides lawyers from Arnold & Porter, with whom have you met?
A I met with Richard Carchman.
Q For what?
A And I believe that's the only other person I can recall meeting, for the purpose of this case.
Q I'm not sure about the qualifier at the end. "For the purpose of the case," why did you say that?

A I thought that was your question, had anything related to this case.
Q Right. Have you met with Arnold & Porter for reasons other than that case?
A No.
Q Have you met with Carchman for reasons other than this case?
A No.
Q When did you meet Carchman?
A I believe it was last week. Either last week or the week before.
Q What did you talk about?
A The research that Philip Morris does.
Q How long did you talk?
A For an hour.
Q Where?
A Pardon?
Q Where?
A Where? At Arnold & Porter's office in Century City.
Q Had you previously planned to meet with him, or was it a coincidental kind of meeting?

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Digitized by the Legacy Tobacco Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

A I don't think I understand the question.
Q You could have been over at Arnold & Porter's for who knows what reason and Carchman could have

coincidentally been there and you could have struck up a conversation which went on for an hour, as opposed to someone wanting you to talk to Carchman and setting it up in advance.
A It was planned; it was not a coincidental meeting.
Q Can you summarize your conversation with Carchman?
Philip Morris is spending X dollars on research or Phillip Morris hasn't spent X dollars on research. He must have had something that he was trying to impart about research, so I'd like to know what that is.
A The purpose for me was to get an idea of what research Philip Morris did. And I had read Dr. Carchman's testimony on the Boeken case; so I had some idea from that. So he described to me many of the projects that they did. He described to me the process by which they fund research through R.F.P.s.
Q What is that?
A A Request For Proposals. Soliciting proposals for research and submitting them to the outside committee that determines which ones are worthwhile, which ones worth funding. And we talked about the types of research, the purpose of it, removing elements from cigarette smoke that the public health community feels

are detrimental or may cause cancer. Some of the effort that they've done over the years.
Q "They," Philip Morris?
A They, meaning Philip Morris. Sometimes in conjunction with, you know, other scientists.
Q Why was this of importance to you?
A It relates to the opinion that I've been asked to give if I testify at trial.
Q How?
A The opinion has to do with the economic model of punitive damages and its role in deterrence and one of the aspects of that is the overdeterrence that occurs if damages are greater than what the economic model specifies.
And then I was looking into the effects, how that will affect, essentially, the market for cigarettes. What would be the effects on the cigarette industry in the case of overdeterrence.
Q What's overdeterrence?
A The level of total damages in -- that is, significantly greater than the level that's determined by the economic model of deterrence.
Q Whose economic model of deterrence are we talking about?
A The one that comes from the economic

literature.
Q Stating?
A Pardon me?
Q Stating?

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Support https://industrydocuments.ucsf.edu/docs/kfxl0001

A It is that the total damages should be determined by the level of compensatory damages divided by the probability of detection.
Q The level of compensatory damages divided by detection?
A Divided by the probability of detection.
Q So if that's really true, then, you mean the punitive should be less than the level of compensatory if you are dividing it?
A No.
Q I'm getting that wrong somehow, right?
A That's not correct.
Q Okay. Well, if you literally divide compensatory by the probability of being caught, aren't you going to be winding up with a number smaller than compensatory?
A No. You wind up with a number larger than compensatory.
Q Okay. Whose compensatories?
A That would depend on the nature of the litigation that you were talking about. But you would

have to go back to the model of -- specify what the situation was that you were talking about.
So the model starts at a level of generality that just says: The party engages in some act and causes some negative economic consequences for the plaintiff. The plaintiff should be -- the damages -- the total damages should be the plaintiff's compensatory damages divided by the probability of detection.
Q Let's run one for the heck of it and see how this works out.
The plaintiff is Mrs. Smith who is run down in the crosswalk by Mr. Jones who's drunk. Mrs. Smith is lucky and received an injury for which proper compensation is 100,000 bucks and lucky that she is not maimed or mangled. Mr. Jones as a drunk driver should be punished somehow.
So tell me where you go with those facts, please, in your economic -- in the economic model that you are discussing.
A Well, the economic model relates to civil damages and is specifically not including any criminal penalties.
Q Okay. But what I've told you is that her compensatory are 100,000 bucks.
A And there are no criminal charges filed?

Q What if there are? Does that change your answer?
A Yes. Then that would take it out of the standard economic model of punitive damage.
Q Let's do it both ways. There is no criminal charges filed.
A So there is no criminal violation involved.
Q Well, I'm just saying there is no criminal charges filed.
A I don't think it's a very pure example.
Q See if you can go with that anyway.
A Well, the problem that I'm having is that for someone who commits -- and I'm not a lawyer; so I don't

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Support http://industrydocuments.ucsf.edu/docs/kfxl0001

know what the law is with regard to this -- but it sounds to me like criminal charges could be filed if they are not filed.

The economic model is not set up to say, "Let's have damages that reflect everything that happened here." If it's a criminal case, there should be criminal charges.

If it's a pure civil case, then the model, which is in simple elements, would say: It should be the compensatory damages which would be the $100,000 for the plaintiff, and then it should be adjusted based on the probability of detection.

Q Okay. I apologize. Let's say for the sake of argument, that Mr. Jones has had the same amount to drink and has traveled the same route 100 times before and was lucky. Never hurt anyone, even though he was driving drunk, just lucky, never hurt anyone. But this time he did.

So the level of detection looks like 100. Now what do you do?

A That's not how the model works. The model would say: If someone engages in some act 100 times that has the negative consequence --

And the way you set it up: 99 times out of 100 there is no negative consequences.

So it needs to be: Someone who engages in some act who has a negative consequence but is not hauled into court for that 100 times out of 100, then the damages need -- very reasonably need to be adjusted, based on full compensation for all the 100 times that that person has done that. I don't think that fits the example that you gave.

Q Well, the example that I gave is that he was doing negative acts 100 times -- because we can all agree nowadays that drunk driving is a negative act -- but that he only hurt someone on the 100th occasion. And I know you understood that. So we have a clear

record, I'll say it again. That's my model, so it does fit.

There might be, in your view, some surplus words in there, and, in your view, he only has to be punished for the one time that he hurts someone, and Mr. Jones doesn't have to be punished for the 100 -- the 99 times he could have hurt someone and he didn't; is this your view?

A No. I think that your example doesn't fit the economic view.

Q Well, with all due respect, I don't care. I've given you an example. That's the example I'm giving you. These things happen all the time.

So are you -- do you not have an economic model? If you don't have one that fits, that's fine. Don't tell me my facts are wrong, though, because my facts aren't wrong. Those are the facts. It happens every day in Los Angeles all over the city and in the United States. If there is no model for the fact, so be it.

I want you to assume those are the facts. Just so we have a clear record, Mrs. Smith is crossing the

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of the Tobacco Industry Documents Library at UCSF http://industrydocuments.ucsf.edu/docs/kfxl0001

street, she's unlucky. And even though she is in the crosswalk, she gets run down by a drunk driver, but she is lucky because she doesn't get killed or maimed, and

she receives an injury that is properly compensated $100,000.

Mr. Jones, the drunk driver, has had this much to drink 99 times before, taking the same route 99 times before, but hasn't hurt anyone and proceeded 99 times. But this time he hurt someone doing the same thing that he's gotten away with 99 times before.

Do you have an opinion as to how you figure out punitive damages that should being assessed against him?

A Well, the example is still incomplete because it doesn't specify what the damages would be for the other 99 times when you didn't hit anybody.

Q No. He doesn't get into an accident.

A So none?

Q None.

A Then I don't see the difference between someone who drove home drunk two times; one time out of which he hit someone and someone who did it 100 times, one time out of which he hit someone.

Q They deserve the same punishment?

A The economic model is set up to deter future behavior. And so in the case of -- in my example where there are two people, two drunks who hit someone in the crosswalk and one of them had only driven home drunk twice, the question for economics is: Would having to

pay full compensation to the woman who is struck be sufficient deterrence to keep them from driving home drunk again? That would be the question.

Q What's the answer?

A It would -- it's not a complete economic question because the person -- this is dealt with in a general law of economics literature, but not in the punitive damages literature. But the example you are giving is one in which the person who is committing the harm is not doing so for economic reason.

Q That's true.

A They are doing it for social reason. And so it gets into what is the utility to that person for being able to drive home drunk? And so it's a rather complicated example for that reason.

But, in general, I would say having to pay $100,000 to compensate someone who is drunk would be sufficient deterrence.

Now, in this case, there's 100 percent probability of being caught because, in your example, sounds like the person was apprehended. The economic model deals with, if this person drove home drunk a lot and had hit several people but hadn't been caught every time, then the question would be what were all the damages that he had created? It would be all the people that he struck.

And if he only got caught one time out of four times that he had struck someone, then the damages ought to be greater than the compensatory damages to that individual.

http://legacy.library.ucsf.edu/tid/vvc37a00/pdf Courtesy of the Tobacco Industry Documents Library at UCSF http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Okay. Thank you. I'm going to reserve -- I'm going to make a motion to strike most of that as nonresponsive and reserve the right to take my objection away, because I may want to use it.

But this deposition will go way faster if you answer my question. If you don't, that's okay, because I'm going to get to you sooner or later. It would be better for all of us if you try to answer my questions in chunks. You will get out what you want to say.

MR. STOEVER, JR.: Let me just note that we oppose the motion. I think the answer was responsive. And we also reserve the right to object to withdrawal of the motion, if Mr. Piuze wants to use the deposition later. I think the witness has answered those responses.

BY MR. PIUZE:

Q Okay. What if Mr. Jones had insurance and his insurance company paid the $100,000; does that change your answer?

A I'm sorry, I didn't hear. Did the insurance company do what?

Q Paid $100,000. Does that change your answer?

A I'm not -- I'd have to ask you what answer you are talking about, because we talked about several different cases. Is it your original question?

Q Sure. That's the problem with answering questions in a string of consciousness like that. I'm not trying to be hard about it, but it will just take forever. I can be hard about it. But right now, I'm not trying to be. I'm pointing it out. It will take forever if you answer the questions -- here we go. So I can have a clean record.

Mrs. Smith is crossing the street in the crosswalk when she becomes unlucky because she gets run down by a drunk driver. She is lucky because she is not killed or maimed, and she has damages that -- personal injury damages that are properly compensated with $100,000.

Mr. Jones is the drunk driver, has had the same amount to drink 99 times before, driven the same route home after having had that amount to drink 99 times before, but luckily has never hurt anyone. And there is no criminal prosecution.

Is it your opinion that, if Mr. Jones has to pay $100,000 out of his pocket for compensation, that he should not have to pay any punitive damages?

A Well, in the economic model it would depend on the probability of detection.

Q Based on the facts I gave you and no other facts, should he have to pay punitive damages?

MR. STOEVER, JR.: Objection. Asked and answered.

THE WITNESS: Well, with a 100 percent of probability of detection, as I understand the question, then the economic model would say that there do not need to be any punitive damages over and above the compensatory damages.

MR. STOEVER, JR.: Okay. Thank you.

BY MR. PIUZE:

Q Let's define "detection."

I'd like you to further assume that, although Mr. Jones is a drunk driver, he's not a hit-and-run

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

driver. And so that any accident Mr. Jones ever gets in he will stop and await the police and confess that he was the driver of the vehicle.

Now, does that answer your concern about detection? Does that mean to you there is 100 percent of detection?

A Yes, I believe so.

Q Okay. And therefore in your view, when Mr. Jones is not a hit-and-run driver, that means if he pays the $100,000 in compensation which is proper compensation for the injury, he'd paid enough and he shouldn't have to pay any punitive damages, correct?

A Yes.

I just have to repeat that since there's -- you haven't specified an example where there is an economic benefit to Mr. Jones, it is a little uncertain what it would take to deter him.

Q Well, that's what I'm asking you.

A Then I can't answer the question because you haven't told me what the benefit to Mr. Jones is, and that's part of the economic model.

Q No. Assuming I'm not going to tell you that. There is no benefit to Mr. Jones. I don't know why Mr. Jones chooses to drink too much before he drives.

For our purposes, let's just say it's his choice and there is no benefit to him, okay?

A Okay.

Q So he should not be punished?

A I didn't say that he shouldn't be punished.

Q He should not be punished with punitive damages?

A Economics doesn't really have the term "punishment" defined. It would say -- economics defines how much the total damages should be. Total damages includes -- is a form of punishment, and so the total damages should be compensatory damages in this case.

Q Okay. What if I told you flat out that California law 100 percent disagrees with what you just

said and compensatory damages is not punishment by definition?

A That's a legal concept and not an economic concept.

Q So be it. But what if I told you that? Is that going to change anything?

A It doesn't change the economics or the economic conclusion.

Q Okay. Have you ever heard -- has anyone ever told you that in California when you pay compensatory damages, that is, per se, not punitive or exemplary or punishing?

A I'm aware that there are differences between the legal definition of punishment and that concept of economics.

Q It's not what I asked though. Can you answer the question I asked?

A Have I ever been told? I don't recall if I've been told that.

Q Okay. Is it your view that before Mr. Jones deserves to have some punitive damages imposed on him, that he has to demonstrate a propensity to be a

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of the Public Industry Documents Library, http://industrydocuments.ucsf.edu/docs/kfxl0001

hit-and-run driver and thereby avoid detection for injuring people while driving drunk before he's a candidate for punitive damages?

A No.
Q Why not?
A I answered no because that wasn't what I had said. But I'm not sure I understand your question.
Q You told me you are going to divide compensatory damages by probability of detection; is that right?
A Yes.
Q Okay. It's always going to be 100 percent probability of detection until the time that Mr. Jones becomes a hit-and-run driver, right?
A Yes.
Q Okay. As long as there's 100 percent probability of detection, no punitive damages are required, correct?
A That's right. Every time he commits that act, he has to fully compensate the victim.
Q Right. Just assume that after a while, after hurting enough people, Mr. Jones doesn't like paying the victims the compensatory damages anymore. So now he turns into a hit-and-run driver. And after running down a few more people, he now hits and runs and he's caught 50 percent of the time by the police later on. So his probability of detection is now 50 percent for the subsequent acts.

Now should there be punitive damages?
A Yes. If he is only caught half the time that he injures people, then the damages should reflect the total damages that he's causing by -- and the way to do that in this example would be to divide compensatory damages by the probability of detection.
Q Go ahead and do it. Is it the compensatory for one victim or for all victims?
A If he's caught one out of every two times, then it's the compensatory damages for two victims each time that he's caught instead of for one.
Q Okay. So let's say that all of these victims just happened to magically have injuries that are properly compensated at $100,000. What's the proper amount of punitive damages?
MR. STOEVER, JR.: Objection. Incomplete hypothetical.
THE WITNESS: So if I can just ask about this example. Every other time he's caught, and he's caught for a specific person that he hits. The other, on average, the one other person that he has already hit isn't identified.
BY MR. PIUZE:
Q Okay.
A Is that the calculation, is we're only

catching you half of the time?
And so in that case, the total damages would be two times compensatory damages. And the punitive damages would be the difference between the total

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf Courtesy of the Legacy Tobacco Documents Library http://industrydocuments.ucsf.edu/docs/kfxl0001

damages and the compensatory damages.
Q Two times what? When you say "two times compensatory damages," what is that? Two times the one victim's compensatory damages?
A That's correct.
Q Okay. So that's $200,000, correct?
A Correct.
Q Divided by what?
MR. STOEVER, JR.: Now, objection. That misstates his testimony.
THE WITNESS: He's caught for a specific act. The damages are $100. 000 divide that by .5 probability of detection, you get total damages of $200,000. The punitives are 200 minus 100 or 100.
BY MR. PIUZE:
Q Okay. What if he's only caught one time out of 10? What if he injures 10 people and is a hit-and-run driver all of those times but only gets caught for one of them? All of these victims have an injury that is properly compensated at $100,000. How much should the punitive damages be?

A And, again, being a hit-and-run driver is purely a civil problem, civil damages?
Q Yes.
A Then the model works the same way.
If you are caught for one specific act and there is felt that this was only one time out of 10, and again, using your assumption that the damages to each person were the same, then the compensatory damages would be $100,000, divide by .1, the probability of detection, the total damages would be $1 million. The punitives would be $900,000 of that million.
Q Thank you. What if we take the sample example? He runs down 10 people while drunk, he runs away 10 times, he's caught only once. The time he's caught, the victim has damages that are properly compensated at $100,000, but the other nine times, those victims' proper compensation, because they got hurt worse, would have been $1 million each time.
Now what's the proper amount of punitive damages against Mr. Jones?
A I guess what I don't understand about your example is how you know that in the nine other times, if you catch someone for one act, how you could know that this person had done it nine other times where the damages were $1 million each time? It doesn't fit

within the economic framework. And it is sort of -- it's getting to be a rather convoluted problem.
Q If it's too convoluted and you can't answer it, just tell me so.
A I don't think I can answer that within the framework of the standard economic model.
Q That's fine. And so what that means is if Mr. Jones, after running down 10 people while drunk and being a hit-and-run driver 10 times but only getting caught once, you're only going to be able to figure out the punitive damages on the basis of the injuries caused to the single person he hurt for whom he was caught, right?

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Tobacco Industry Documents Library at the University of California, San Francisco. http://tobaccodocuments.ucsf.edu/docs/kfxl0001

A Unless you have a basis to estimate damages to other individuals.
Q Okay. So I'm right then. Because he was caught, he wasn't caught the other times, no one knows. Only he knows and only his conscience knows. So if you have no -- if no one else knew about the damages to the other victims, then you'd have to base your punitive damages on the injuries caused to the one victim for whom he was caught, correct?
A This seems -- as I understand this -- it is saying a person is caught for one infraction of the law, and if that one person has committed other infractions

of the law that we don't know about, we don't have any way of assessing damages.
Q We know --
A That's very obviously true.
Q We know -- well, in your model it is, but -- okay. We know he did the other nine. But he is not going to tell us who, when or where. So we can't figure out what the injuries were to the other nine.
So in your economic model, if you are going to be multiplying something times 10 because his probability of success in evading detection is 9 out of 10, it's always going to be 10 times the $100,000, right?
A I'm not sure I understand all the assumptions that are here now.
Q What don't you understand?
A We know, but we don't know.
Q We know he hurt nine other people. And there was a hit-and-run nine other times. We don't know how badly they were hurt.
A How do we know there was a hit-and-run nine other times?
Q He admitted it.
A So he tells us, "I've hit nine other people too"?
Q That's right.

A It seems like a very inadequate example. You would then go out and investigate those nine other incidents with his help, if he is admitting to doing it. It's a very convoluted example.
Q Go with it. You're still going to be multiplying $100,000 times 10, right? That is all you can do.
A No. I think what you would do in that case is investigate or hire someone to try to calculate something different. If you have information that it's different, then you should try to find out what other information is possible.
Q I'm not going to find out. Sometimes you can't find out. That's the hypothetical I'm giving you.
A So these are people -- we know other people were injured, but we have no idea whether the injury was greater or less than the injury to the one for which he was caught.
Q That's right.
A Then I guess my answer would be that it would be to divide by the probability of detection, as I said before.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Internet Archive in 2014 http://www.industrydocuments.ucsf.edu/docs/kfxl0001

Q And get $1 million?
A And get $1 million.
Q Thanks. Now let's take your suggestion. We

investigate further, either with the use of the police or private police, and we find the other nine victims. And each of the other nine victims has a $1 million injury. Now, how do you punish Mr. Jones?
MR. STOEVER, JR.: I'm sorry, could you read back that question for me?
(The requested testimony was read back)
MR. STOEVER, JR.: Thank you.
THE WITNESS: I'm trying to understand the legal process with each of these people bringing a private lawsuit against him.
BY MR. PIUZE:
Q Let's say no. Let's say no.
A Then what is the process by which he's being asked to compensate them?
Q I didn't say he was being asked to compensate them. I'm just following along to see where your logic takes us.
We have found out about the nine other people and we've determined that the injuries are properly compensable for 1 million bucks a piece. They don't pursue him.
How should Mr. Jones be punished?
A Well, when he is punished the first time and he admits that he struck nine other people, and now you

say we find the nine other people, then I would expect that they would have a cause of action against him in court and recover their damages.
Q Don't expect that. I just want to know how do we punish him. I'm not talking about them recovering their damages. I want to know how we punish him with punitive damages?
What is the proper amount of punitive damages?
A But he's already had his day in court. And based on the information that was available at that time, he's already had the punishment assessed against him.
Q Yep. But someone asked for a new trial -- this is great -- and here's the new trial and here's the new information. There was nine other victims and each one had an injury worth 1 million bucks.
What is the proper amount of punishment for Mr. Jones?
MR. STOEVER, JR.: I'm not sure I understand. The other nine are not seeking any compensation from Mr. Jones, right?
MR. PIUZE: Right.
MR. STOEVER, JR.: Okay.
MR. PIUZE: I feel like Arthur Miller. Isn't that his name? The professor from Harvard that used to have

a show like this.
MR. STOEVER, JR.: I kind of think of you more as John McLaughlin.
MR. PIUZE: I can't think of myself --

http://legacy.library.ucsf.edu/tid/vct07a00/pdf Courtesy of the Tobacco Industry Documents Library at UCSF http://industrydocuments.ucsf.edu/docs/kfxl0001

THE WITNESS: Well, since I don't understand -- I'm not a lawyer, so I don't understand how this works in terms of having a second trial.

My initial reaction would be you should then undo the result of the first trial and fully compensate the victims that are now known and the damages are now known and we can correctly assess the damages.

BY MR. PIUZE:

Q This trial is only for Mrs. Smith. It is not for the others. It is just for Mrs. Smith. And Mrs. Smith's trial, the jury is told that Mr. Jones hit and ran a total of 10 times and that the damages to the other 9 people were properly compensated at $1 million a piece. That would be the value if they were to be compensated, but they weren't. Mrs. Smith still has her $100,000 case.

What's the proper amount of punitive damages for Mr. Jones?

A If Mrs. Jones is bringing the case?

Q Mrs. Smith.

A Mrs. Smith, oh --

Q Mr. Jones might sue -- Mrs. Jones might have sued for divorce a long time ago. We don't know. That is not part of the hypo.

A If the damages are known to the other victims, then that should be included in the punitive damages.

Q How much should the punitive damages be?

A You know, I don't think this has ever been -- this case has ever been handled by the economic literature, and it is so arbitrary. It wouldn't represent any general principle.

There's nothing that economics can say for a case with such specific and convoluted circumstances that the model is a general model. And so I don't think that it's possible to use the multiplier in this case.

Q So you don't have an opinion?

A That's right. I don't have an opinion about how you would calculate damages in that case.

Q Okay. Mr. Jones still runs down Mrs. Smith, he still hits and runs, he gets caught in her case. She has a $100,000 compensable injury; an investigation turns up the fact that Mr. Jones had done this nine other times, hurt nine other people, each one of these people had an injury that was properly compensated at $1 million each. One of them sued and won the $1 million. They got their million dollars.

Now, here's Mrs. Jones (sic) in court with her case that's worth $100,000. She wants the jury to punish -- to award punitive damages against Mr. Jones.

How much should they award her?

A So all the other nine have already been compensated?

Q Yes, sir.

A And when she comes to court, are you saying that the situation is that now he's going to be detected 100 percent of the time?

Q I'm not saying what is going to happen -- what has happened because he wasn't detected originally because he hit and ran. All the subsequent

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of the Legacy Tobacco Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

investigation caught him and he was ultimately detected.
A What I think you are describing is a case that would be very confusing to the jury to figure out, what was the probability of detection; and, therefore, what would deter him from engaging in this conduct in the future. So if he had done it as a serial offender 10 times and had to pay damages 10 times, he should have been deterred from doing it again.
And I still believe that criminal sanctions would have been involved at some point, and that's maybe the purpose of them. I'm not a lawyer. So I think it's a case in which the jury would be scratching their heads

and saying, "What is the probability of detection here? What do we have to do to deter him? Is it sufficient that it be the full compensation to Mrs. Smith? Or should it be greater because it appears he believes he is not going to be detected 100 percent of the time?"
Q I will tell you what, you leave what the jury is going to do to me. While you were at the Federal Reserve Board, I was learning how to do this. If I asked you to help determine what the jury was going to do, then I apologize.
Why don't you tell me what your economic model is.
A It's the same answer that an economist trying to come up with the probability of detection in this case with these circumstances would have a little difficulty.
Q Okay. Well, it's okay if you have difficulty. You get paid a lot of money. It is difficult.
Do you have an answer?
A No. If the circumstances are 10 repeated incidents, after each one of which full compensation is paid and he is still running people down in the crosswalk, then apparently the full compensation was not enough to deter him.
And we get back to the problem that this is a noneconomic behavior that is he doing. And we are

trying to apply an economic model to noneconomic behavior. I think that might be part of the problem. For these reasons, I do not have an answer for you.
Q Okay. Has Mr. Carchman told you how many people have died from smoking Philip Morris's products?
A No.
Q Have you asked?
A No.
Q Do you care?
A Pardon?
Q Do you care?
A Certainly I care. How many people have died from smoking cigarettes --
Q No. From smoking Philip Morris's.
A -- or Philip Morris?
MR. STOEVER, JR.: Are you asking for his personal opinion, or does he care for purposes of the opinions in this case?
MR. PIUZE: No. For the purposes of the opinions in this case.
THE WITNESS: I'm not giving medical or scientific testimony; so that is not something that is part of my

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of the Legacy Tobacco Documents Library http://industrydocuments.ucsf.edu/docs/kfxl0001

opinion. I certainly have a personal opinion.
BY MR. PIUZE:
Q I'm not asking -- I appreciate that. I'm not

trying to make you into a bad human being. That's not my intent. So it's on the record and you can quote me later on. I'm not going to try to do that.
As an economist who is here to talk about economic models for punitive damages, do you care how many people have been killed by Philip Morris's products?
MR. STOEVER, JR.: Assumes facts not in evidence.
MR. PIUZE: Which would those be?
MR. STOEVER, JR.: That anyone has been killed by Philip Morris's products.
MR. PIUZE: It's an astounding thing to say.
MR. STOEVER, JR.: It's not in evidence. I'm not saying you won't put it into evidence. I'm not saying that.
MR. PIUZE: It is an astounding thing to say.
BY MR. PIUZE:
Q Go ahead, sir.
A "Care" is not a word that I can relate to. What I'm doing in this case, since I'm providing opinions and I'm considering evidence and information and doing that, but "care" is not a word that -- you'll have to explain what you mean by that.
Q I will use a different word.
Does it matter to you as an economist in trying to figure out whether a certain economic model is correct

or in applying the correct economic model, does it matter to you how many people have been killed by Philip Morris' products?
MR. STOEVER, JR.: Same objection.
THE WITNESS: I don't think it's part of my testimony as an economist. And, therefore, it's not a number that I'm attempting to estimate. And again, as, you know, a personal matter, I care, but as part of my testimony, I don't think that's a number that is an input to my testimony.
BY MR. PIUZE:
Q Fine. Remember our extended conversation about Mrs. Smith, the victim in the crosswalk and Mr. Jones the drunk driver? Do you remember that?
A Yes.
Q Didn't you ask me on several occasions how many victims there had been?
A Yes.
Q Okay. Why?
A It was a different example.
Q Don't you care how many victims there had been at Philip Morris' conduct?
A I think I answered that question already. I said that was not part of my testimony and that it is not a number that is an input to what I'm doing to

provide my opinion.
Q So whatever it is that your opinion's ultimately going to be, whether one person has died from Philip Morris's products or 10 people have died or

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf Courtesy of the Legacy Tobacco Documents Library industrydocuments.ucsf.edu/docs/kfxl0001

10 million people have died, does not matter to your economic model; is that true?
A Well, it enters into the probability of detection, but the specific number -- I'm assuming for purposes of this opinion that, first of all, that Betty Bullock has won on liability; and, therefore, I'm assuming certain behavior in the past. And then I'm looking at what the probability of detection is, if that behavior were to be repeated.
Q In the future only?
A And for Betty Bullocks who bring their cases to court.
Q Future Betty Bullocks?
A No. If there are other people who have circumstances like Betty Bullock and can bring similar cases to court. That probability is relevant also.
Q Okay. But, again, I have to ask you to answer my questions because, you know, I think I'm asking like, "Is that blue or green," and are you telling me, "It's the square root of 11." That's not what I asked.
Does it matter to you in your economic model

whether Philip Morris's products and conduct have killed one person or 10 million people?
MR. STOEVER, JR.: Objection. Asked and answered.
THE WITNESS: And I believe I answered the question by saying the specific number does not matter.
But I'm assuming the same liability for Philip Morris possibly in other cases. And my testimony has to do with what the probability of detection is in those cases.
So that does involve your question, but my answer is the specific number is not what is important.
BY MR. PIUZE:
Q Okay. Then I'll ask a question which will incorporate my real question, your answer and we will see if all of that gets me an answer to my question.
Does it matter to you as an economist giving opinions in this case -- not as a human being, but as an economist giving opinions in this case -- whether one person has died in the past from Philip Morris's conduct or 10 million have died in the past for Philip Morris's conduct? Assuming that all future lawsuits that are going to be brought are not brought by those that have already deceased.
A Now, what I'm having trouble is: Does it matter that the dichotomy between one person and

10 million people, if you assume that -- assuming that no one is going to bring a lawsuit against Philip Morris in the future?
Q None of those people that already died, whether it be one or 10 million is going to bring a lawsuit against Philip Morris in the future. It's too late for them. The Statute of Limitations has run. The only different people who have not yet died that will be bringing these lawsuits.
A It is important in determining what will deter Philip Morris in the future from engaging in the conduct that it was alleged to have engaged in in the past.
Q Okay. Let's just say for the sake of argument

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf
Digitized by the Internet Archive in 2014 http://www.tobaccodocuments.org/industrydocuments.ucsf.edu/docs/kfxl0001

that Betty Bullock herself has a $5 million injury. When it comes time to decide on punitive damage amounts, how does the past death of one person from Philip Morris's conduct versus the past death of 10 million people from Philip Morris's conduct factor into the determination of punitive damages?

A It factors in on the side of the harm that allegedly was caused by certain conduct, and has to be set off against whatever damages would be assessed in this case as well as in other cases, and settlements that have been -- that have occurred or are in the process of occurring.

Q What do you mean by "set off"?

A What the economic literature says is: That a single case should not assume that it is the only case in which punitive damages will be assessed.

Now, you've assumed away any other litigants in the future, but we still have over $200 billion of damages that have been assessed against cigarette industry for the same alleged conduct in the Master Settlement Agreement, and there are already pending other cases that may result in punitive damages. So those things would be considered along with the conduct in the past and what effect it had.

Q Be my guest. In other words, everything that you want to bring into play here, bring into play. It's not a variable. You are bringing the same thing into play on both sides of my question. It's just one variable. One dead person versus 10 million dead people.

Now, how does the difference between one dead person versus 10 million dead people factor into your analysis?

A I think I answered the question. The problem is to come up with a probability of detection to combine with the compensatory damages in Betty Bullock's case, and that probability of detection would encompass

looking at other damages that are or may be paid for the same harm.

Q I think what I'm hearing from you is: It doesn't -- Philip Morris is going to pay the same amount whether it is one dead person in the past or 10 million dead people in the past. Isn't that where your answer is going? Isn't that your answer?

MR. STOEVER, JR.: Objection. Misstates his testimony.

MR. PIUZE: Well, I'm asking.

THE WITNESS: No, it isn't.

BY MR. PIUZE:

Q Okay. I'm going to give you everything you want here, almost. So let's hear what things you've assumed -- understood to get to what you think the proper amount is to punish Philip Morris through punitive damages.

First of all, do you have an opinion on that in Betty Bullock's case?

A Opinions on what?

Q How much the punitive damages should be.

A Right now I have not been asked to come up

http://legacy.library.ucsf.edu/tid/vvc37a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

with a specific number.
Q Why not? Did you ever ask them? "Guys, am I going to talk around this for two days in front of this

jury, maybe? Aren't I going to have a number at the end?" Did you ever ask them that?
A No.
Q Did you ever wonder that?
A No.
Q Why not?
A Because I think I'm going to give the amount of guidance that an economist can give in applying these principals.
Q Guide me then.
A Pardon?
Q Guide me. You tell me what you need to know, and I'll fill in the hypothetical amounts for you.
Let's assume Betty Bullock wins her case. If she doesn't win her case on liability, you are not going to show up on the second phase of the trial.
So she has won her case. Do you want to know how much? Is that important to you?
A No.
Q You don't care how much the jury gave her?
A I do care, but it's not essential.
Q Why do you care? Let's get rid of the human being setup for one last time. None of these questions are about you as a caring human being. These are all to you as a professional economist giving your opinions.

Now, why do you care how much money Ms. Bullock got in compensatory damages by the time you show up in Phase II?
A Well, I still don't agree with the term "care" because it doesn't have any meaning to me as an economist. I could say what will be involved in my opinion, what is part of the opinion, what is needed to calculate something, but none of that translates to the word "care."
Q Great. Betty Bullock is awarded $5 million by the jury. What other facts do you want?
A That is sufficient.
Q Okay. What should the punitive damages be?
A That based on the allegations of the case having to do with behavior of Philip Morris and given the admissions that Philip Morris has made, the oversight by regulators and by independent watchdog groups and by courts, and given the restrictions that have been agreed to on marketing practices, other things by Philip Morris, that the probability that Philip Morris would be detected if it repeated the behavior that was alleged by Betty Bullock. That probability is very high, probably close to 100 percent.
And therefore the economic model would say that the total damages in the case of Betty Bullock should

probably be somewhere in the range of one to two times the compensatory damages.
Q Where does that come from?
A That would come from --

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of the Legacy Tobacco Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

MR. STOEVER, JR.: I'm going to object to the form of the question as vague and ambiguous. Are you asking for his opinion when you say, "Where does this come from"?
BY MR. PIUZE:
Q He said the economic model would call to one to two times or words to that effect.
How does that come out of the model? Where does this come from?
A That comes from a range of probabilities from 50 percent to 100 percent.
Q 50 percent of what to 100 percent of what?
A If we assume that Philip Morris would attempt to repeat the behavior that was alleged by Betty Bullock, starting today, if there is 100 percent probability of it being detected, then the total damages for Betty Bullock should be equal to the compensatory damages.
And if the probability of detection of Philip Morris is as low as 50 percent, then the model would call for total damages of two times the

compensatory damages.
Q Okay. So just assume the following here: Philip Morris is run by scum and Philip Morris sells and advertises and promotes its cigarettes in countries other than the United States -- all over Asia, Africa, Latin America -- with impunity and without the kind of warnings that we have here and specifically and unabashedly targets youth. And so they are in the process at this instant of doing it again somewhere else.
And further assume that there is a 100 percent chance that it's going to get caught sooner or later. Just assume those two things to be true. I'm giving you with 100 percent probability that it's going to be caught the second time around also.
What should Ms. Bullock's punitive damages be, if anything?
MR. STOEVER, JR.: Objection. The question is vague and ambiguous. When you say "Philip Morris," are you referring to the defendant in this case?
BY MR. PIUZE:
Q Go ahead and answer my question, if you can.
MR. STOEVER, JR.: The question is vague and ambiguous as being an incomplete hypothetical.
THE WITNESS: Your question has to do with their

behavior overseas?
BY MR. PIUZE:
Q Yes.
A And I don't consider that to be a part of this case, or part of the opinion that I'm giving.
Q Well, consider it.
MR. STOEVER, JR.: Same objections. If you can. If you thought about it.
THE WITNESS: And the other part of your question was that there was a 100 percent chance of detection?
BY MR. PIUZE:
Q Yes. Ultimately 100 percent of detection.
A If there is 100 percent of detection, then all

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf
Digitized by the Internet Archive in 2014 http://www.tobaccodocuments.org/ucsf/industrydocuments.ucsf.edu/docs/kfxl0001

of the damages caused by the actions that you have assumed will have to be paid. And it's an economically preposterous situation to say that a company knowing there's 100 percent chance of being caught would engage in an activity where they have to pay such enormous damages.

Q I never said they were going to have to pay. I said they were going to be caught. I didn't say they were going to have to pay.

Don't forget the Statute of Limitations runs out on dead people. They may run up another 20 or 30 or 40 or 50 million dead people before they get caught. And the

Statute of Limitations will have run as to 99.9 percent of them.

So the hypothetical is they are going to do it again. They are doing it again and they are going to get caught 20 or 30 or 40 years down the line. But I didn't say anything about having to pay.

Let's just assume they don't have to pay. I should save all of this for trial.

(Interruption in the proceedings)

MR. STOEVER, JR.: Let me note my objection to the question. The hypothetical has been changed now with the Statute of Limitations being suggested by Mr. Piuze, is still an incomplete hypothetical; I think it's outside the scope of this expert's disclosure; and I think it's vague and ambiguous with respect to whether Mr. Piuze is talking about the defendant in this case or some other company.

BY MR. PIUZE:

Q Okay. What is your answer?

A I'm sorry, I didn't realize there was a question.

Q Gee. I guess I should take that as an insult.

Philip Morris is repeating -- this isn't the hypothetical -- assume Philip Morris is, at this instance, repeating its conduct in various parts of the

world. It is targeting youth, marketing to youth, advertising to youth, purposely trying to addict youth to use its product which it knows is very harmful.

There are no warnings, such as we have here in most of the parts of the world where Philip Morris is carrying on this conduct. Philip Morris will ultimately get run down and get caught, but it will not happen for many decades and tens of millions of people will be killed. But because of the way things are, they will not be compensated.

So there's 100 percent chance of detection the second time around, but there is not going to be any compensation paid to the vast majority of the victims. Let's say that 90 percent of the damage will never be paid.

How does that affect your opinion as far as the punitive damages that should be awarded in Ms. Bullock's case?

MR. STOEVER, JR.: Objection. Vague and ambiguous with respect to which company Counsel is speaking about, whether it's the defendant in this case or another company; it's an incomplete hypothetical; it's a

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

question beyond the scope of this witness's expert designation.
He was designated to discuss damages in this case

related to conduct alleged in the Complaint, not conduct outside California, and certainly not outside the United States.
And so on those grounds, if you can answer, if you thought about it and have an opinion, go ahead and answer.
THE WITNESS: It's outside the scope of what I could answer, based on those facts.
BY MR. PIUZE:
Q Why? You are the one that brought it up?
MR. STOEVER, JR.: Objection. That's argumentative and it misstates his earlier testimony.
BY MR. PIUZE:
Q Okay. Let's change it. I'm not going to mention state boundaries or counties. Philip Morris will repeat its behavior; assume that. Philip Morris will ultimately detect it. There is a 100 percent probability of that; assume that. Before Philip Morris detects it, another 20 million people will die; assume that. And last, assume that out of those 20 million, 19 million will never get any compensation; assume that.
What are the punitive damages that should be awarded in Ms. Bullock's case, based on those assumptions?
MR. STOEVER, JR.: Objection. Incomplete

hypothetical; its vague and ambiguous.
THE WITNESS: Well, I've already said that a consideration is other types of damages for the same conduct, and the Master Settlement Agreement alleges all the same conduct that Betty Bullock does, and since the damages there are -- according to all analysts that I've read -- are greater than the actual compensation to the states. They may very well reflect damages on the basis of people who have died.
So I don't believe that your hypothetical excludes the possibility that a company that caused harm to people who died before they could come to court would necessarily escape punishment.
BY MR. PIUZE:
Q You're mishearing, somehow, my question. And it ain't that hard a question. According to your C.V. you are a pretty bright guy.
This isn't about the people who have died. This is about the future conduct. These are people who are going to die. This is about Philip Morris repeating. So I'll say it again.
You told me in your economic model, if there's almost no chance that Philip Morris is ever going to do this again because the probability of detection is so high, they should pay Mrs. Bullock the $5 million that

the jury awards her for compensatory damages and walk, right? Isn't that what you said so far?
MR. STOEVER, JR.: Objection. Misstates his earlier testimony.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of the Legacy Tobacco Documents Library (LTDL) at industrydocuments.ucsf.edu/docs/kfxl0001

THE WITNESS: Yeah. I will go with the answer that I gave before.
BY MR. PIUZE:
Q Well, say it again. Let's have a nice starting point. Say it again.
Based on everything that you know about Philip Morris's past conduct, if you come to this trial in front of this jury that's going to be hearing this question, and you feel, as a hypothetical, that Philip Morris will never do this again, is it your opinion that the $5 million in compensatory damages is enough and there should be no punitive damages?
A I feel that there's a high probability that if Philip Morris repeats the conduct that's been alleged -- undertook in the past, that it would be detected.
And I'm not being a legal expert, I don't know what all of the avenues of compensation are in court.
But I believe that the probability of detection is high, and in the economic model, detection means having to pay the damages.
Q Okay. So the answer is yes?

A I don't know what the "yes" is to.
Q That's because you are not listening to my question. If you answer my question, it would be easy. I'm going further than you are.
Philip Morris will not repeat. Forget high probability of being caught. Philip Morris has gotten religion. They will not repeat. Based on everything that you know that happened in the past, that this jury awards Ms. Bullock $5 million, should Philip Morris walk without paying any further punitive damages?
MR. STOEVER, JR.: Objection. Asked and answered; argumentative.
THE WITNESS: If you assume 100 percent chance of detection, then the economic model would say so. The answer is yes. The economic model would say that the total damages should be equal to compensatory damages.
BY MR. PIUZE:
Q Excellent.
MR. STOEVER, JR.: We've been about one and a half hours, can we take a break, please?
MR. PIUZE: What do you want a break for?
MR. STOEVER, JR.: I want to use the rest room.
MR. PIUZE: Go ahead. Use the rest room. It's fine.
(A break was taken)

MR. PIUZE: Okay. Sir, knowing -- have you had enough of a break now?
THE WITNESS: Yes.
MR. PIUZE: Mr. Stoever?
MR. STOEVER, JR.: Yes, I have. Thank you very much.
MR. PIUZE: Its free.
BY MR. PIUZE:
Q Taking into account all of those facts which you -- of which you are aware; the Master Settlement Agreement, you alluded to that; Philip Morris's admissions, you alluded to that; the possibility that other people are going to bring lawsuits, you alluded to

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf
Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

that; the fact that some people besides Betty Bullock have brought lawsuits, you've alluded to that; and the fact there have been some other verdicts already against Philip Morris, you alluded to that.

So everything that you've already thought of that you told me about, and if you didn't tell me about, that's okay too. If Ms. Bullock obtains a $5 million compensatory verdict from the jury, I'd like you to further assume to everything you've already said to me that Philip Morris's conduct killed one other person in the past who has not come forward and never will come forward to claim damages.

Does that change your opinion that you've already expressed that the $5 million of compensation to Ms. Bullock will be enough and that there should be no more punitive damages?

A Since you've allowed me to incorporate all the facts and the thing that I mentioned before, I would say that is no. That's already covered by those other things that I mentioned before.

Q Thank you. And take all of your assumptions that you mentioned before, but instead of one dead person that's never going to get compensated who was killed by Philip Morris's acts, there are 10 million dead people who died as a result of Philip Morris's wrongful acts, and the 10 million are never going to be compensated and Ms. Bullock obtains her $5 million compensatory judgment, does that change your opinion that there should be no further punitive damages awarded to Ms. Bullock?

A First of all, I didn't say that, no further punitive damages, did I? I said that there was a range between one and two times the compensatory damages.

Q You said that either she should get no punitive damages if there is no chance of Philip Morris repeating, and that she should get an additional $5 million in punitive damages if Philip Morris repeats,

if there is a 50 percent chance that Philip Morris will repeat.

A That's right.

MR. STOEVER, JR.: Objection. I don't think that stated his testimony correctly.

BY MR. PIUZE:

Q Well, he does.

What's your answer?

A So now the question is: Whether it makes a difference or whether there should be a different calculation if there are more people who died allegedly because of, I guess, the behavior of Philip Morris?

And again, incorporating everything that I said before, because those things were taken into account, the past behavior of Philip Morris and whatever they knew about the consequences of it, I would say no. My answer is still the same, because my answer wasn't premised on either one or 10 million people.

Q All right. Whether one or 10 million died as a result of Philip Morris's wrongful conduct in the past is an irrelevant factor to the way you analyzed this problem, isn't it?

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf
Generated by http://www.industrydocuments.ucsf.edu/docs/kfxl0001

A No. That's not what I'm saying.
Q Why not?
A The actual number is not irrelevant. I'm

saying that people already have information about Philip Morris's past behavior and the consequences of it and they have come to certain conclusions and will have come to certain conclusions by the time I go on the stand, if I go on the stand. And therefore, it's not irrelevant, but it is part of the overall calculation that results in my opinion.
Q Okay. Then how does your opinion differ, whether it's one dead person in the past or 10 million dead people in the past?
A If there was certainty about the one person or 10 million people, I would have to rethink what my opinion was, but it is not -- it is based on the assumption that we're dealing with the conduct and all the other people who have also assessed how many people were affected by Philip Morris's conduct. Not only Betty Bullock, but all the other calculations that were done. I don't think I can -- I don't think I can say how it would change.
Now, that I think about it, it is impossible how it would change, if it was one person or 10 million people because then all those other calculations that were done for the Master Settlement Agreement and the other litigation and possibly in this trial are wrong.
So it's an impossible -- it's impossible to answer

that question because it's just -- it doesn't connect with the facts on which my opinion are based.
Q Doesn't that sort of clue you in that maybe the facts that your opinions are based are the wrong facts?
A No.
Q If all other variables are equal, Betty Bullock should receive the same amount of punitive damages, zero, if Philip Morris's chances of detection in the future are 100 percent; and $5 million, if Philip Morris's chances of detect in the future are 50 percent.
And if the only variable is one dead person in the past from Philip Morris's wrongful conduct versus 10 million dead people in the past versus Philip Morris's wrongful conduct, your answer does not change, does it?
MR. STOEVER, JR.: Objection. Asked and answered.
THE WITNESS: I disagree. I think I did answer it. And what you are doing is what is called an economic ceteris paribus, which means holding everything else constant and changing one thing.
Sometime it's possible to do that in economics. Sometimes it's not possible to do that and get an accurate answer because the variables are interrelated.

In this case it's not possible. What you are asking me to do is not accurate. It's not possible in economics because the other variables in this case are premised on the actual facts, and then you are asking me

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf Courtesy of the Legacy Tobacco Documents Library (LTDL) at industrydocuments.ucsf.edu/docs/kfxl0001

to change one variable and hold everything constant, and that doesn't work.
BY MR. PIUZE:
Q So you think that everything Philip Morris has paid out already has taken into account whether or not there was one dead person in the past or 10 million dead people in the past, right?
A It may have.
Q No. I'm not asking if it "may have."I'm asking is that what you are telling me, not may have.
Is that what you are telling me?
A Well, I don't know the decision process or what was in the minds of those who made the Master Settlement Agreement, or the litigation that's out there. I'm saying it may have.
But yes, whatever went into that, went into and it was based on looking at the conduct of Philip Morris and other tobacco companies, and so it is not possible -- it is not a correct statement to say that my opinion would not change if it was 1 million or 10 million, because that's just something that you can't do with the results

that I have. You can't change that variable.
Q Lookit, this is so easy, so easy. You are getting in your own way. This is so easy. You've told me what your opinion is going to be in this case here.
Now I'm saying to you: Assume one dead person in the past from Philip Morris's wrongful conduct. Please assume that. Now, do you have the same opinion that you've already told me?
MR. STOEVER, JR.: Occasion. Asked and answered; it's also changed the hypothetical.
BY MR. PIUZE:
Q Go ahead.
A I've tried to answer your question and I've said --
Q Do you or don't you?
A It's not a question of whether it changed my opinion. It is orthogonal to my opinion. It is outside of my opinion.
Q The more you say "orthogonal," the more you are running away from an easy question. That is like an octopus blowing out black smoke. It is not orthogonal. It's a hypothetical question. You get to answer hypothetical questions.
Assume one person died in the past from Philip Morris's conduct. Does that or doesn't that

change your opinion?
MR. STOEVER, JR.: Objection. Asked and answered.
THE WITNESS: Would require all the other variables that I've discussed in this opinion to change; and, therefore, it would ultimately change my opinion.
BY MR. PIUZE:
Q Okay. Tell me how it just changed your opinion? What is your new opinion?
A I don't know because I don't know what would happen to all those other things. I can't predict what would happen to the Master Settlement if they determined Philip Morris had violated the law and, as a result, one person had died in the past. I don't know what the

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf Courtesy of the Legacy Tobacco Documents Library (LTDL) at industrydocuments.ucsf.edu/docs/kfxl0001

Master Settlement would be. I don't know what any of the changes in conduct or admissions of any of that would be.

Q Who said Philip Morris violated the law? I haven't said that. Where did that come from?

A Then you will have to tell me what your assumption is.

Q Are you assuming Philip Morris violated the law?

MR. STOEVER, JR.: Objection. Outside the scope of this witness's expertise. He is not a lawyer.

///

BY MR. PIUZE:

Q Why did this come up? Is that what your assumptions is, that Philip Morris violated the law, sir?

A That Philip Morris -- I don't know the legal definition of what is behind your assumption that one person died as a result of Philip Morris's conduct. I can't answer your question without knowing what I'm supposed to be assuming there.

Q Did Philip Morris -- do you know what a tort is?

A Yes.

Q Philip Morris' tortious conduct killed a person in the past. That's all. I haven't said anything about violating the law.

A Okay.

MR. STOEVER, JR.: Objection. I think it is tortious conduct. It is in violation of the law; otherwise, it wouldn't be tortious. Object to the question as vague and ambiguous; misleading; outside this witness' scope of expertise.

BY MR. PIUZE:

Q What did you have in mind when you said "violate the law"?

A The allegations in Betty Bullock's Complaint,

or fraud, misrepresentation and other things which, as Mr. Stoever had said, are torts. And if you cover damages --

Q I don't think I said that, but anyway go ahead.

A If you -- okay. If you can recover damages for, in my mind, you violated the law and you've been made to pay damages in court.

Q Okay.

A Sorry if I wasn't technically correct on that.

Q Maybe I should be sorry. And if there is any chance I should be, I am sorry. As long as we are on the same level and we are not talking about criminally, right? You didn't have that in mind, did you?

A No, I didn't.

Q Excellent. So we can continue.

If I ask you to assume that one person died in the past from Philip Morris's conduct as alleged by Betty Bullock -- fraud, misrepresentation, concealment, cover up -- what is your opinion about how much in punitive damages to which she is entitled?

MR. STOEVER, JR.: Objection. Asked and answered;

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Tobacco Industry Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

incomplete hypothetical.
THE WITNESS: Yeah. I think that is the question that I answered before, and it is that the world would

be very different.
BY MR. PIUZE:
Q Okay. So the world is different. I'm asking the world is now different. That is my hypothetical.
A Then I have to make new assumptions about what a master settlement would be; what conduct Philip Morris would be agreeing to; how much oversight there would be if only one person had died in the past and people felt that that was Philip Morris's responsibility. It's doubtful to me that there would be the number of tobacco control groups and watchdog groups looking over the industry. Everything would be different.
I would think in that case, it's likely that the probability of detection would be lower. If you were to assume that Philip Morris would engage in some activity such was alleged in the past, if they were to engage in the future, the probability of detection might be lower. So everything would change in the calculation.
Q Okay.
A And I have no way of telling what my answer would be as far as what the probability of detection would be.
Q All right. So now let's go with 10 million people instead of 1 million people.
A And it's the same answer.

Q That you don't have an answer?
A Don't have an answer because my opinion is based on all the facts as they are today, not on any specific number of people that Betty Bullock is alleging died as a result of wrongful acts by Philip Morris.
Q Why not?
MR. STOEVER, JR.: Objection. Vague and ambiguous. The witness has already answered that question. Asked and answered.
BY MR. PIUZE:
Q Why not?
A I'm sorry, why not what?
MR. STOEVER, JR.: Let's have his last answer read back.
(The requested testimony was read back)
BY MR. PIUZE:
Q What do you know about the Master Settlement Agreement?
A I've studied the restrictions that it imposes that were agreed to by the tobacco companies. I've studied the payments that are to be made and the formulas for making those payments and the enforcement provisions. And I've read the whole thing; so I'm somewhat familiar with all of it.
Q How much money was paid out in punitive

damages?
A I haven't tried to calculate that.
Q Doesn't it say?
A No, it doesn't.

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf Courtesy of the Legacy Tobacco Documents Library http://industrydocuments.ucsf.edu/docs/kfxl0001

Q What Master Settlement Agreement did you look at?
A I've given a copy of it here. The ones that's available -- the Master Settlement Agreement that was signed in 1998 with 46 states.
Q Okay. How much?
A It's usually reported as $206 billion.
Q What had previously been paid?
MR. STOEVER, JR.: Objection. Vague and ambiguous. To whom?
BY MR. PIUZE:
Q The other states. Several states settled before this Master Agreement.
A Four states settled separately with the tobacco companies.
Q How much?
A I think that was $40 billion.
Q Right. So if you threw it into the total, what's the new total of the Master Settlement Agreement, including the previous payments?
A $246 billion.

Q Now, are you aware that there had been a prior proposed Master Settlement Agreement?
A Are you referring to the federal or the prior state agreement?
Q Let's just leave it where it is.
Are you aware of any proposed prior Master Settlement Agreement?
A Yes.
Q Okay. What agreement do you have some awareness on?
A I know there were negotiations with -- at the national level -- to have a settlement agreement before 1998.
Q When?
A Pardon?
Q When?
A Why?
Q When.
A When. It was either the previous year or '97 or '96, I think.
Q How much?
A I believe it was in the neighborhood of -- it was more. It was over $300 billion.
Q Do you know how much?
A No. I don't recall the number.

Q If I said $368 billion, would that ring a bell?
A That sounds like what I remember.
Q Okay. Just assume that to be true. I think it is. I could be off, but I think that's the right number. What's the difference between 368 and 246?
A $122 billion.
MR. PIUZE: Is that right, Mr. Stoever?
MR. STOEVER, JR.: I'll take his word for it.
BY MR. PIUZE:
Q What did the tobacco industry get in the first Proposed Settlement Agreement in exchange for the extra $122 billion?

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Digitized by the Tobacco Industry Documents Library at http://industrydocuments.ucsf.edu/docs/kfxl0001

A Well, I'm not familiar enough with the earlier agreement to know what was proposed in that.
Q What if I told you, just for the sake of conversation, that the only thing that the tobacco industry got was immunity from future punitive damages. If that were true, would you then have an idea about how much money it would take to properly punish the tobacco industry for its misdeeds?
A No. I don't think so.
Q Why not?
A Well, first of all, I don't know what all the provisions of both agreements were, how the first one

differed. Secondly, what I recall reading in the newspapers at the time was that it's not so simple as to say there was a number that you could attribute to total damages in some form, and as apart from the whole negotiating process and the political process.
And what I recall is that a lot of numbers were thrown up, but ultimately, I guess political consensus was not reached or consensus between politicians and negotiators for the industry. And so I wouldn't attribute any particular number to being accurate as far as total damages that anyone felt should be attributed to the industry.
Q I know, but I'm asking you to assume this, though.
A I'm sorry, you are asking me to assume?
Q This. I'm just asking you to assume that the only difference between the two proposals was that in one for $368 billion the tobacco industry gets immunity from punitive damages. And in the other, two, $246 million, the tobacco industry does not get immunity for punitive damages. Just sum that.
If that's true, does that help you determine what the proper amount of punitive damages should be against the tobacco industry?
MR. STOEVER, JR.: You are asking him that is the

only difference? Assuming away the Federal legislation that was contemplated in a June 20th agreement and all the other things --
BY MR. PIUZE:
Q I'm assuming that is the only difference.
A I wouldn't know. I would -- on the basis of what you've told me, I couldn't do that calculation.
Q I knew --
A And you want me to assume away such things there is still a federal lawsuit and all the other --
Q There wouldn't have been. Yes, I'm asking you to assume that away. That is exactly for $368 billion. No future punitive damages. Yes, assume that. Absolutely.
Now that you've done that, can you tell me what the value of the punitive damages is?
A No. I think it would be a problem. I would have to work on it for some time.
Q Fine. Do you know who Geoffrey Bible is?
A Yes.
Q Who is Geoffrey Bible?
A The C.E.O. of Philip Morris companies.

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Emeritus.
A And he is stepping down.
Q Have you ever gotten any information about

what he thought the tobacco industry was ready to pay as a proper number to escape future punitive damages?
A No, I haven't.
Q What if I told you -- and I'd like you to assume this is true -- that Geoffrey Bible, the C.E.O. of Philip Morris, 50 percent of the U.S. market -- you know that to be true, don't you?
A That's what I've read is approximately correct.
Q Okay. You know that Philip Morris is the dominant tobacco company in America? Obviously, right?
A The largest company, if that is what you mean by "dominant."
Q It is one of the things. Let's go with largest, richest, more profitable. You know that is true, all those three things, right?
A At this time, yes.
Q Okay. If the C.E.O. of Philip Morris said to the United States Congress that he -- speaking for the industry -- believed that it would be worth $60 billion to the tobacco industry to get out from under the threat of future punitive damage payments, would that give you any idea as to what the future -- as to what the proper punishment should be for the tobacco industry?
A No. I would have to work on it.

Q Would that give you any idea of what the proper punishment would be for Philip Morris? Keeping in mind it has 50 percent of the market share.
A Same answer.
Q Okay. Now, what were the payments in the Master Settlement Agreement for? The $206 billion. What was it for?
A I've looked at the Complaints in the lawsuits of a number of estates that were settled by the M.S.A., and there were claims for Medicare benefits; there were claims for pretty much the same range of behavior that are in the claims that Betty Bullock is making; and there were claims for punitive damages; there are claims for fines. Quite a long list of things.
And given that it was a negotiated settlement, I don't know. There is no way to break down the $206 billion in any of those components. Those were the things that went into the claims.
Q You don't know if one penny was for punitive damages, right?
A That's correct. I don't know for sure if even one penny was for punitive damage.
Q If that's true, when we're talking about an economic model for assessing punitive damages for Philip Morris, what in the world does the

Master Settlement Agreement have to do with anything?
A It represents damages that Philip Morris is paying over and above what were represented as compensatory damages in those lawsuits. It is not a

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/kfxl0001

calculation that I've done. But according to all of the analysts that I've read, and, therefore, in the economic model, could be considered as equivalent to punitive damages.

MR. PIUZE: I got to hear this one again, Ms. Reporter.

(The requested testimony was read back)

BY MR. PIUZE:

Q Who said it represents money over and above what was represented as compensatory damages?

A It's been reported in various newspaper stories, and it was also alleged in a number of lawsuits that were brought by various parties saying that what was being collected by the states was greater than what they had supposedly paid out.

Q You don't believe everything that you read in the newspaper, do you?

A No, I don't.

Q What newspaper articles did you have in mind?

A I have -- in the materials that I've considered and I've turned over here, I think I have

some that make reference to that.

Q What kind of newspapers?

A I don't remember, specifically, any particular newspaper.

Q Where did you get the newspapers?

A From Internet searches and other Lexus, Nexus searches.

Q Who did those searches?

A People on my staff.

Q Did Arnold & Porter give you anything?

A No.

Q Have they, Arnold & Porter, given you any materials at all?

A Give me any materials? I'm trying to recall. Only the case materials, depositions and testimony.

Q What testimony?

A Some of the testimony from the Boeken trial and depositions from Betty Bullock's lawsuit.

Q What testimony from the Boeken trial?

A Carchman, Whidby, W-H-I-D-B-Y, Merlot, Johnson, and those are the ones that I can remember, offhand.

Q Okay. What else from the Boeken trial? Anything besides testimony?

A No. I don't believe so.

Q Okay. What case materials from Bullock?

A Betty Bullock's deposition, the Complaint, Interrogatories and depositions of other witnesses.

Q Such as?

A Her family members and friends that were deposed. I think those were the ones you -- that I've read.

Q Did you ask for those?

A Yeah. I said, "Can I look at any of the materials from this case?" And they said, "What do you want?" And I said, "Well, I should read the Complaint and Betty Bullock's deposition." And then when I became aware there were other depositions of people that

http://legacy.library.ucsf.edu/tid/vct07a00/pdf
Digitized by the Tobacco Industry Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

related to her testimony, then I asked for those too.
Q Why did you want to see them?
A To understand something about the background of the case and of the allegations that she was making.
Q Why?
A To be informed about it.
Q Why?
A For that reason.
MR. STOEVER, JR.: Let me also say for the record, Mr. Piuze, that in view of your desire to cut down on the number of trees we killed, we have not produced those case materials back to you, in Dr. Hekman's

materials.
MR. PIUZE: Which? Any of them?
MR. STOEVER, JR.: In any of those transcript and case materials. If you want them, we will make copies, but they are not in the box we brought today.
MR. PIUZE: You properly have satisfied my tree-hugging, green-leaning wishes.
BY MR. PIUZE:
Q So you wanted to read the depositions of Betty Bullock's sisters and brother?
A Yes.
Q Did you do that for free?
A Pardon?
Q Did you do that for free?
A No. I billed for that time.
Q How much?
A At the same rate that I bill everything.
Q How much?
A Which is $375 an hour.
Q How much time did it take you to read all those depositions?
A I didn't spend very much time of the depositions of friends and relatives. I couldn't -- all of them, maybe a couple of hours.
Q I don't blame you. That would be the point of

diminishing returns.
A There were diminishing returns.
Q So what else have you reviewed besides the Boeken transcripts that you told me about, and the Bullock transcripts that you've told me about, and the Answers to Interrogatories and the Complaint?
A We've talked about the Master Settlement Agreement.
Q We have.
A I've spent time with Philip Morris's website and the statements that they make there. The links that they have.
Q What statements? Let's stop there.
What statement does Philip Morris make on its website?
A It makes statements about -- major things are the smoking and health and addictiveness of cigarette of nicotine.
Q What does it say about the addictiveness of the cigarettes?
A That they agree that cigarettes are addictive.
Q When did they agree that cigarettes were

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf
Source: http://www.tobaccoindustrydocuments.ucsf.edu/docs/kfxl0001

addictive?
A Within the last couple of years.
Q Which is?

A 2001, I think.
Q Okay. When did Philip Morris know that cigarettes were addictive?
A I don't know.
Q Did you by any chance get honored enough to be watching when the seven chief executive officers of the tobacco companies stood before Congress and testified in 1994?
A I don't recall whether I saw that at the time.
Q Did you see it ever?
A No. I know I haven't seen a replay of it.
Q Do you know what they said?
A I only know what's been reported.
Q Who reported?
A In the newspapers.
Q All right. Do you know what they said about addictiveness?
A No.
Q What if I told you that the president and C.E.O. of Philip Morris, a man named Campbell, testified before Congress that cigarettes were addictive. Would that surprise you? In 1994.
A I don't know what the context of it was; so it doesn't surprise me.
Q Do you know what new, marvelous breakthroughs

occurred between 1994 and 2001 --
A No.
Q -- to allow Philip Morris to change what the C.E.O. said on its website?
A No.
Q What if I asked you to assume that about 40 years ago Philip Morris executives -- I'm sorry -- Philip Morris scientists wrote in memos that have been preserved for us to this day, that they understood that cigarettes were addictive, but they weren't going to tell anyone about it because it might screw up their defense in cases such as this. Just assume that's true.
If Philip Morris kept a secret for 35, 40 years, the fact that the scientists thought cigarettes were addictive, would that affect any opinions you have as far as punitive damages?
MR. STOEVER, JR.: Objection. It's an incomplete hypothetical.
THE WITNESS: I'm trying to understand the question. The end of it: Would it affect my opinion about punitive damages? And the beginning of it was: If I were to assume that Philip Morris -- about Philip Morris executives at some point? I just didn't -- I wasn't able to put it altogether.
///

BY MR. PIUZE:
Q Why? It's not an orthogonal question. It is, like, linear.
Assume Philip Morris research scientists knew 35 or

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf
Digitized by the Legacy Industry Documents Library. http://www.industrydocuments.ucsf.edu/docs/kfxl0001

40 years ago that cigarettes were addictive and decided to keep their mouth shut because, in their own words, if they let this out, it would ruin their defense in personal injury and wrongful death cases like this.

Would that change any of the opinions that you told me about regarding punitive damages?

MR. STOEVER, JR.: Same objections.

THE WITNESS: It wouldn't change my opinion because I'm not a medical expert or a scientific expert and I don't know what the consequences of those things -- were I to assume them like you asked me to -- were. So once again, I'm assuming the world as it is, and that would include whatever has been factored in from the documents that have been put forward and everything else.

BY MR. PIUZE:

Q Yeah, I know. But you also told me that one of the things you took into mind is the admissions that Philip Morris said. Do you remember saying that today?

A Yes.

Q And one of the admissions you are talking about is the fact that cigarette smoking is addictive,

right?

A Right.

Q So if that's worth something for you to know, now I'm telling you something else that maybe you didn't know, and I'm asking you to assume it's true.

Philip Morris dummied up about this 35 or 40 years before it made the admission; does that change any of your opinions?

MR. STOEVER, JR.: Objection. Incomplete hypothetical; asked and answered.

THE WITNESS: I don't see how it would change my opinion, since I'm assuming whatever allegations about conduct occurred in the past, and I think those probabilities include allegations that Philip Morris misrepresented the connection between cigarettes and addiction. And so I think it's probably already included in what is the facts from the past, and I'm looking at the facts today.

BY MR. PIUZE:

Q Then why did you even bother mentioning Phillip Morris's admissions?

A Because it's something they can't take back. It affects -- if the allegations in the past were that they did certain things based on denying a connection, then the fact that they have openly and on their website

made the admission, means they can't take it back. And that has profound implications for people's ability to get damages from them, if they were to reserve that or if they were to act in a way such as been alleged in the past.

Q What if I told you Philip Morris, despite knowing about the addictive qualities of tobacco for 35 or 40 years, chose not to admit it until after the Master Settlement Agreement was signed.

Would that change any of your opinion that you offered here today?

A No. I don't think so.

Q Okay. Now, is there also something on the

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of the Legacy Tobacco Documents Library (LTDL) at industrydocuments.ucsf.edu/docs/kfxl0001

website about the fact that smoking cigarettes might cause lung cancer?
A Yes.
Q What does it say?
A It says that Philip Morris agrees with the public health community that cigarette smoking is a cause of cancer.
Q Did Philip Morris admit it?
A I guess, 2001.
Q When did Philip Morris know that?
A I don't know.
Q When did you know that?

A My personal opinion, obviously, when -- probably when I was a kid.
Q How old?
A Pardon?
Q How old?
A I don't know. I suppose by age 10 or 12.
Q Let's split the difference. Let's make 11. What year were you born?
A 1958.
Q If you knew it in '58, do you think Philip Morris knew it in '58?
MR. STOEVER, JR.: Objection. Calls for speculation; lack of foundation.
THE WITNESS: I don't know.
BY MR. PIUZE:
Q Do you have an opinion?
A Pardon me?
Q Do you have an opinion?
MR. STOEVER, JR.: Objection. Vague and ambiguous.
BY MR. PIUZE:
Q Do you have an opinion that Philip Morris knew the fact that his cigarettes caused lung cancer way back in 1958?
MR. STOEVER, JR.: Objection. Beyond the scope of this expert's designation.

THE WITNESS: I don't have an opinion about that.
BY MR. PIUZE:
Q Does it strike you as -- do you have any kind of degrees in chemistry?
A Do I have any --
Q Kind of degrees in chemistry.
A No, I don't.
Q Biology?
A No.
Q Science?
A No.
Q Doesn't it strike you a little bit funny that you figured this out by 1958, but Philip Morris scientists didn't figure it out until 2001?
MR. STOEVER, JR.: Objection. Vague and ambiguous.
THE WITNESS: I don't know.
BY MR. PIUZE:
Q Why not?
A I don't know what Philip Morris knew.
Q We're past that. This is the part where I'm saying: Doesn't it strike you as a little bit funny that they had all of these Ph.D. chemists, biologists

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

and other scientists, and you knew in '58 and they didn't know it until 2001? Doesn't that strike you as funny?

MR. STOEVER, JR.: Objection. Vague and ambiguous; asked and answered.

THE WITNESS: Yeah. I don't know what they knew.

BY MR. PIUZE:

Q It's not what I asked. Doesn't it?

A How can it strike me as funny if I don't what they knew? Are you saying, "Assume they knew"? I guess I don't understand the premises of the question.

Q Don't you think they knew? "I don't know what they knew" doesn't strike you as funny that you figured it out and they couldn't?

A I don't know what they figured out.

Q Well, if they figured it out, why didn't they admit it before 2001?

MR. STOEVER, JR.: Objection. Lacks foundation; beyond the scope of this witness's expertise.

If you know, you can answer.

THE WITNESS: I don't know what they said before 2001.

BY MR. PIUZE:

Q Aren't they lying S.O.B.s, perjurous, disgusting? You are taking their money.

A You can make money better places than this.

MR. STOEVER, JR.: That's just an argumentative and ad hominem attack.

MR. PIUZE: It is an ad hominem attack on Philip Morris, yes. That's my goal. That's what this case is about. You figured that out. This is an ad homonym attack on Philip Morris.

MR. STOEVER, JR.: It's inappropriate in a deposition.

BY MR. PIUZE:

Q I mean, don't you see -- you say you don't know what they knew, but they didn't admit it until 2001. So that either makes them liars who are dummying up and knew it and didn't say anything about it, or stupid, doesn't it?

MR. STOEVER, JR.: Objection. Calls for speculation with this witness; lacks foundation; beyond the scope of this witness' expertise.

MR. PIUZE: You are right. I withdraw the question.

BY MR. PIUZE:

Q Now, I'd like you to assume that there are other documents that were left by Philip Morris's scientists and there was also testimony from Philip Morris scientists that, in fact, everyone down there knew darn well that smoking cigarettes caused lung cancer, by -- for the sake of argument -- 1975; assume that, okay?

A Yes.

Q But they didn't admit it until 2001. Does that change any of the opinions you have about punitive damages in this case?

http://legacy.library.ucsf.edu/tid/vvt97a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

MR. STOEVER, JR.: Objection. It's an incomplete hypothetical.
THE WITNESS: No. I don't see how it affects what I'm doing.
BY MR. PIUZE:
Q Fine. And if I told you that -- just pointed out to you that, although they knew since the mid '70s smoking cigarettes causes lung cancer, and although they didn't admit it until 2001, this admission came after the Master Settlement Agreement, does that change any of your opinions in this case?
MR. STOEVER, JR.: Objection. Incomplete hypothetical.
THE WITNESS: I thought I already answered that question.
BY MR. PIUZE:
Q You did for addictiveness.
A For addictiveness, I see.
Q This is lung cancer.
A No. It doesn't change my opinion, because I'm assuming the allegations that were made.

Q What allegations?
A I believe the allegations include not talking about the connection between smoking and health. And so if I'm already assuming that Betty Bullock wins her suit and that's what's been found, that fraud and misrepresentation has occurred.
Q All right.
A So I don't see how it would change under your hypothetical.
Q Okay. I'm simply pointing out they didn't admit it until after the Master Settlement numbers had been arrived at. That's the point I'm trying to emphasis. So there is no misunderstanding.
Does that change any of your opinions?
MR. STOEVER, JR.: Objection. Assumes facts not in evidence; incomplete hypothetical.
THE WITNESS: No, it doesn't.
MR. STOEVER, JR.: Can we go off the record for just a minute?
MR. PIUZE: Absolutely.
(A discussion was held off the record)
BY MR. PIUZE:
Q I have opened the box that you brought right in front of you, correct?
A Yes.

Q And I've come up with a videotape. What is on this videotape?
A Antismoking ads from Philip Morris.
Q Did you ask for those?
A No.
Q Who gave them to you?
A Mr. Stoever.
Q Okay. Did he tell you why?
A No.
Q Did you watch them?
A Yes.
Q What do you think?
A Well done.

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Qualitywise?
A That was my impression, yeah.
Q Is that all you think, is that the quality of the ads is good?
MR. STOEVER, JR.: Objection. It's vague and ambiguous.
THE WITNESS: Yeah. I don't consider myself an expert in what influence teenagers. I think they compare very well with other ads that I've seen trying to influence teenagers over the years.
BY MR. PIUZE:
Q All right. Why don't you just let me know

what all this stuff is.
Here is something. What's that?
(Documents are handed to the witness)
THE WITNESS: Information following up on the M.S.A. from the Council of State Governments suggesting further legislation.
BY MR. PIUZE:
Q Did you ask for that?
A Yes.
Q Did you obtain that yourself?
A I did.
Q Why?
A I got it along with another booklet that is in there that is a -- that I saw a story on from the Council of State Governments talking about M.S.A. payments and to what extent they are falling short of what was projected, and this came with it.
Q Did you read "this came with it" stuff?
A I haven't read all of this. I've looked through it.
Q Does it have any significance to you?
A No. I couldn't say it doesn't, other than indicating how much legislation is being suggested.
Q Okay. So for the record, suggested State legislation 2000, Volume 59, Supplement Tobacco

Settlement Legislation, Council of State Governments, Lexington, Kentucky, published August 1999, okay.
What's this next one, please?
A One of the articles on the punitive damages model.
Q What punitive damages model?
A The model of punitive damages that's been involved in economic literature.
Q Okay. Who wrote that?
A Robert Cooter.
Q Do you know who he is?
A Just know him as having read several of his articles and his contributions to this, and cited in other articles.
Q Who is he?
A I don't know where is he from. I don't recall where he is from. Is that what you mean?
Q Is he an economist?
A I believe so.
Q Okay. Where did you get this?
A From the literature search.
Q Do you know from what journal this came?

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

A I don't recall, offhand.
Q You didn't do a journal search yourself, did you?

A No.
Q Who did it?
A Someone on my staff.
Q Do you know if this guy is an academic?
A Yes, he is.
Q Is he a lawyer?
A I don't recall whether he is a lawyer or an economist or both. He writes about the economics of punitive damages.
Q So the name of this is Punitive Damages, Social Norms and Economic Analysis by Robert D. Cooter -- and if you -- did you read this?
A Yes.
Q Did you look at this footnote right after Cooter's name?
A Probably.
Q Did you see where it says that he is the Harmon F. Salvon Professor of Law at the University of Berkeley?
A That will explain where he is from.
Q I guess you didn't see it, right?
A I did at the time.
Q Anyway, this says, Page 73, summer of 1997.
MR. PIUZE: Mr. Stoever, can you tell me where this was published? Law and Contemporary Problems, is that

it?
MR. STOEVER, JR.: That is certainly who copyrighted it. Let's see if there's a header on one of the pages. Law in Contemporary Problems, Volume 60, Number 3, Page 73.
BY MR. PIUZE:
Q Excellent.
What's -- so you were you using Cooter's economic model?
A No. But he's written about aspects of the model.
Q Is there --
A But I'm not relying on him as far as formulating the model.
Q Is there a model?
A Yes, I believe so.
Q It's like if you wanted to buy a car, I would go buy a Ford, Chevy, Toyota, Honda and others, if I wanted a model.
Could I go buy a given model of economics of punitive damages?
A Economics isn't quite that simple. But there's a pretty well-accepted model, yes.
Q So there's only one model?
A Well, as I said, economics is not that simple.

There's a model; some people write in criticizing pieces of it or agreeing with pieces of it. You don't have 100 percent agreement on anything in economics, but there is a pretty well-accepted model.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Well, so I'm saying, do you agree with what Cooter says here?
A I don't remember everything that he said or whether I agree with it.
Q Do you disagree with anything that he said?
A I don't recall that either.
Q Okay. How much is a nickel worth? Economically speaking.
A Five cents.
Q Excellent. All economists would agree to that, wouldn't they?
A If you get creative about that.
Q What does that mean? You disagree with that on a different day?
A I'm being facetious, but yes. All right. I will say we would all agree that a nickel is five cents.
Q What's that? This next thing I put down.
A The Challenge of Punitive Damages, Mathematics by Kip Viscusi.
MR. STOEVER, JR.: V-I-S-C-U-S-I.
///

BY MR. PIUZE:
Q Who's that?
A He's an economist who teaches at Harvard law school.
Q Do you know him?
A Yeah.
Q How?
A I met him when I was at North Carolina and he was at Duke.
Q How?
A Just going to seminars and social events and things.
Q He is a friend of yours?
A No.
Q How many times have you met him?
A I don't recall. It's been a long time.
Q Hundreds?
A Pardon?
Q Hundreds?
A No.
Q Thousands?
A A couple of times.
Q Okay. So this is the Journal of Legal Studies, June 2001. And what did Viscusi say here?
A It's another one of the articles that

discusses the economic model of punitive damages.
Q Did you agree with what he said?
A I believe so.
Q Did you disagree with anything?
A I don't remember anything that I disagree with from the article.
Q Okay. Here's the next one. The Economic Theory of Public Enforcement of the Law, by Polinsky and Shavell, S-H-A-V-E-L-L. Where did you get that from?
A Got it from people who published it, N.B.E.R.
Q What does that mean?
A That's the National Bureau of Economic Research.

http://legacy.library.ucsf.edu/tid/vct07a00/pdf
Digitized by the Tobacco Industry Documents Library at http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Did you read it?
A Yes.
Q Did you agree with it?
A Yeah. Don't remember anything that I disagreed with.
Q Okay. Was that from March of 1999?
A Yes.
Q Here's one from February of 1999. What's this one called?
A Economic Analysis of Law.
Q Same journal?
A Yes. It's not a journal. It's a research

institution that publishes White Papers.
Q What are White Papers?
A Working papers.
Q Is it the same two people again here?
A No. This is Kaplow and Shavell.
Q Who is Kaplow?
A I don't know Kaplow.
Q Do you know Shavell?
A Uh-huh, yes.
Q Who's that?
A He's another economist who teaches at Harvard law school.
Q Do you agree with what was in there?
A Yes.
Q Anything you see in there that you disagreed with?
A I don't recall anything.
Q Okay. What's this next one?
A This is a periodical newspaper report about the Master Settlement Agreement. And it's in the Tobacco Industry Litigation Reporter from November of 1998.
Q What is the Tobacco Industry Litigation Reporter?
A Well, it's a periodical, they have a website,

they monitor tobacco litigation. You can subscribe and get instant updates, et cetera.
Q Do you subscribe?
A No.
Q Do you get instant updates?
A Not from them.
Q Did you read this particular volume from November 3, 1998?
A Yes.
Q Did you agree with it?
A Well, it's newspaper reporting sort of material; so as I recall, it's a factual story about the settlement. So there is nothing to agree with or disagree with.
Q So you didn't agree or disagree?
A Right. It's background reading.
Q What's this next one?
A From the Federal Trade Commission, it's an announcement on the settlement of charges against producers of alternative cigarettes.
Q Why do you have that?
A Pardon?

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Support http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Why do you have that?
A I looked at the F.T.C. to see what kind of activity they have monitoring the tobacco industry, and this is one of the things that I found. And so I found that they were active in looking at claims made by companies that are smaller tobacco companies as well as the larger tobacco companies.
Q What significance is that to you?
A It's helpful in understanding the amount of monitoring that influences the probability of future detection of behavior by the cigarette industry.
Q What is the amount of monitoring?
A Well, this is a piece of the overall -- the fact that they bring an action against this company for misleading advertising means they are monitoring the industry and bringing actions if they feel that something is misleading. That is some small piece of information for me.
Q So what company did the F.T.C. bring an action against?
A Santa Fe Natural Tobacco Company.
Q And did the F.T.C. bring any action against R.J. Reynolds?
MR. STOEVER, JR.: Objection. Vague and ambiguous. When?
BY MR. PIUZE:
Q Ever.
A I'm not sure. I don't know.

Q Philip Morris?
A I don't know.
Q Lorillard?
A I don't know.
Q Ligget Myers?
A I don't know. I haven't looked at everything that the F.T.C. did.
Q Well, obviously. So you are going to base part of your opinions on the fact that the F.T.C. is picking on some dust mote, never-heard-of-before, little teensy-weensy company, the Santa Fe Natural Tobacco Company? You want to base part of your opinion on that?
A I don't know that this influences my opinion at all, but it's reading about different amounts of monitoring by different institutions, state's attorney general, the F.T.C., many different ones.
Q What's this next piece of paper?
A The Washington Post story about the revenue shortfall in the tobacco settlement.
Q Okay. Did you get that or did your staff get it for you?
A I guess my staff did the search.
Q Who's your staff? Who's doing this? Who is doing this?
A People who have worked on this case are

primarily Lisa Marovich and Paul -- I don't remember Paul's last name right now.
Q Send a copy of this deposition to Paul. How long has Paul been with you?

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Digitized by the Legacy Tobacco Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

A Oh, probably a year or so.
Q How many people do you have working for you?
A The company that I work for has something around 50 employees.
Q 50?
A Yes.
Q All in Century City?
A Yes.
Q And what is -- is it Lisa Marovich?
A Yes.
Q What is her occupation?
A She has a title of economist.
Q And Paul?
A Research assistant.
Q Okay. What's this?
A It's a listing of payments under the M.S.A., and it comes from the General Accounting Office in Washington.
Q Why do you have this?
A Information about the payments under the M.S.A.

Q Okay. So that's June 2001, right?
A Yes.
Q And what's this?
A It's a story about federal -- proposed federal restrictions on cigarette marketing.
Q What if I told you, in addition to Betty Bullock, there have been 50 other individuals who sued the tobacco industry -- let's keep it to Philip Morris -- that sued Philip Morris on the same theory that she is asserting?
Would that knowledge change any of your opinions?
A I guess not that alone.
Q What it I told you there were 500 instead of 50 people that had brought lawsuits against Philip Morris on the same basis that Betty Bullock has?
Would that change any of your opinions?
MR. STOEVER, JR.: Objection. Vague and ambiguous. You mean bring a suit or actually get a judgment against Philip Morris?
BY MR. PIUZE:
Q No. Bring a lawsuit.
A I think my opinion is based on the understanding that a large number of people have brought lawsuits against Philip Morris.
Q I know.

A So I don't see how -- so the answer would be no because it wouldn't change it because I'm aware of lawsuits being brought against them.
Q How many?
A There are hundreds pending at present.
Q How do you know that?
A From various sources, newspapers, from annual reports of the tobacco companies.
Q How many are pending against Philip Morris?
A I don't recall. I know it's in the hundreds.
Q So I guess this is -- we can bottom line this by saying it doesn't matter to you whether there are 50 such lawsuits, 500 such lawsuits, or 2000 such

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

lawsuits. It doesn't change any of your opinions, right?
MR. STOEVER, JR.: Objection. Misstates his earlier testimony.
THE WITNESS: Well, it would be the same answer as the question about one person or 10 million people. Its based on the facts that are out there now. And so it's not correct to say that it wouldn't change if you were to tell me that, instead of the actual lawsuit, it was only 5 or 50. Because, again, it would change many other things.
///

BY MR. PIUZE:
Q No, it wouldn't. It wouldn't change anything. The Master Settlement Agreement occurred. All that stuff is in the past. Now I'm talking about the future. It doesn't change anything. What does it change? It only changes itself. What else does it change?
MR. STOEVER, JR.: Objection. Vague and ambiguous.
THE WITNESS: I don't understand.
BY MR. PIUZE:
Q English?
A It doesn't change my opinion because my opinion is based on the fact that there are hundreds of lawsuits.
Q Okay. So I'm telling you there are thousands; does that change your opinion?
A No, I don't think.
Q Good. Excellent. Are you assuming any particular odds of success for these lawsuits?
A No. I haven't done -- I haven't looked at that in particular.
Q Would that matter to you?
A I think that the odds of success are relatively high.
Q Why?
A For the same reasons that I gave with regard

to conduct in the future. Admissions that have been made, documents that are available, oversight, ability to examine the industry in great detail. So that if they have valid claims, with that proviso, if the claims in those lawsuits have merit, I think they have a high chance of success.
Q What is "merit"?
A If they can convince the jury of the allegations that are in their Complaint.
Q You are going in circles.
A Just as with Betty Bullock.
Q If they convince the jury, they win; if they win, it's got merit. It's a non sequitur.
What are the odds of the success of these cases, have you taken that into account?
MR. STOEVER, JR.: Objection. Asked and answered.
THE WITNESS: Yes. I think I have taken it into account.
BY MR. PIUZE:
Q What are the odds of success of the lawsuits?
A I don't have a number. But I think that for the same reasons as the conduct in the future, that

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf Courtesy of the Legacy Tobacco Documents Library http://industrydocuments.ucsf.edu/docs/kfxl0001

lawsuits that have merit have a high chance of success.
Q What's "merit"?
A Higher than in the past, because all of that

is available now.
Q What cases have merit?
A I'm not a judge of what case has merit. I don't know what the merits of the cases are. I don't know what the merits of Betty Bullock's are.
Q How can you say the cases have a high chance of success?
A Because of all the factors I've identified that make it much easier to examine the past and present conduct of the tobacco industry.
Q Are there a lot of lawyers out there lined up to take these cases?
A I don't know.
Q Wouldn't you want to know that?
A Well, if the cases are already there, I guess they have lawyers.
Q The factors that you are taking into account and making your determinations about punitive damages, is the fact that there are and will be future lawsuits, right? Didn't I hear you say that?
A Yes.
Q Okay. Don't you want to know how many future lawsuits?
A Okay.
Q Do you want to know that?

A Now I feel like we're going in circles. I'm observing that there are many lawsuits today.
Q Uh-huh.
A I'm not concerned about the supply of attorneys for them because that seems to be available. I don't have any reason to believe it's not available.
Q You're badly misinformed. Have you ever read that lawyers don't want to take tobacco cases because of how hard they are?
A I'm not an expert on what cases lawyers take or what they say.
Q Obviously. But have you ever read that?
A I don't recall having read that.
Q Okay. Do you have any idea how much it costs to prosecute a case like this?
A No.
Q Not at all? Maybe you think that it is more than 100,000 bucks. Do you have any idea of that?
A I don't know.
Q More or less than $500,000 bucks? Do you have an opinion on that?
A No, I don't.
Q Okay. Do you know if Philip Morris lets it be known that they will throw hordes of lawyers at these cases as a disincentive to plaintiff's attorneys taking

the cases?
MR. STOEVER, JR.: Objection. Assumes facts not in evidence.
THE WITNESS: I don't know.

http://legacy.library.ucsf.edu/tid/vvc37a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

BY MR. PIUZE:
Q Unwashed hordes, did you know that?
MR. STOEVER, JR.: I think I'm the only unwashed Philip Morris has thrown at anybody.
MR. PIUZE: That's only because they don't want you to go home and take a shower. I'll note this on the record on your behalf, even though I know you would like to go home and take a shower. I also note that Mr. Stoever hasn't said that to me at all. I'm just observing. I recognize that title.
THE WITNESS: No. I believe there was a question.
MR. PIUZE: Yes.
THE WITNESS: The answer is no.
BY MR. PIUZE:
Q The answer is no. Would it matter to you if Philip Morris let it be known it was going to unleash its lawyers in every conceivable way, including every conceivable appealable step imaginable to fight to the death?
A I'm not an expert on the legal system, and I don't have a way of evaluating that statement.

Q Wouldn't make any difference to you?
MR. STOEVER, JR.: Objection. Assumes facts not in evidence.
THE WITNESS: I don't think that is something I can incorporate.
BY MR. PIUZE:
Q Have you ever heard of George Patton?
A General George Patton?
Q Sure.
A I think so.
Q Do you know who he was?
A Yes.
Q Who?
A He was an army commander in World War II in Europe.
Q He was a local. He was from San Marino. Did you know that?
A Yes, I did.
Q He came from a wealthy family.
A Correct.
Q Supposed to have been an extreme warrior, you know that, right?
A That's correct.
Q Allowed George C. Scott to portray him in a movie; you know that?

A Yes.
Q Assume that there is a document from tobacco lawyers which says, quote, to paraphrase General Patton, "The way we won all those cases was not by spending all of R.J. Reynolds' money, but by making the poor -- the other poor son-of-a-bitch spend all of his money," closed quote, referring to plaintiffs lawyers. Assume that to be a true document, and believe it or not, truly exists.
Would knowing that part of the tobacco industry's strategy is trying to out-muscle the victims' lawyers with dollars, would that change any of your opinions about punitive damages?

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of the Legacy Tobacco Documents Library industrydocuments.ucsf.edu/docs/kfxl0001

MR. STOEVER, JR.: Objection. The question lacks foundation; the document being referred to is a document from R.J. Reynolds' lawyers and not Philip Morris's lawyer.
MR. PIUZE: It's true.
MR. STOEVER, JR.: And asking this witness to speculate. He doesn't know what the lawyers have done -- Philip Morris has done or plan to do with defending these cases.
MR. PIUZE: Go ahead. Answer my question.
MR. STOEVER, JR.: If you can answer, go ahead.
THE WITNESS: I don't have a way of answering that

or incorporating that in my opinion.
BY MR. PIUZE:
Q Okay. Did you know that one of the big allegations underlying all of the litigation -- the Master Settlement Agreement, the state cases, the U.S. government cases, individual cases -- is that all of the tobacco companies, including Reynolds and Philip Morris conspired with each other? Do you know that?
A I know there are allegations of conspiracy. I don't know all of specifics of it.
Q Okay. What's that?
A This is listing of sponsorships and contributions by Philip Morris from which we got from the Internet.
Q Why?
A Listing of entities, organizations that Philip Morris contributes to.
Q I got that part. Why?
A To look at what activity Philip Morris does in terms of contributions.
Q Why?
A To see what the consequence would be of overdeterrence to the extent that it reduced or eliminated Phillip Morris from the tobacco industry what

the consequences would be.
Q What would the consequences be?
A Well, in my opinion it would be that smaller tobacco companies that are increasing their share right now, but would have a larger share of the industry.
There would be smaller payments to the M.S.A. It would affect the amount of research and development that's being done on reducing the risk of cigarettes. It would reduce the amount of contributions that Philip Morris makes to charitable organizations and would reduce our ability to oversee the tobacco industry, because it would be made up of many, many small companies instead of large companies that have agreed to the restrictions of the M.S.A.
Q So I guess it's better to have a couple of mass murderers rather than a whole horde of petty crooks; is that what you are saying?
MR. STOEVER, JR.: Objection. Argumentative.
BY MR. PIUZE:
Q Sir?
A I don't know what you are referring to.
Q Sure you do. Mass murderers. It's easier to

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/kfxl0001

watch over Philip Morris and R.J. Reynolds and Lorillard than it is to watch over a whole bunch of small tobacco companies; isn't that what you said?

MR. STOEVER, JR.: Objection. Misstates his earlier testimony.
BY MR. PIUZE:
Q To prevent them from wrong doing in the future.
MR. STOEVER, JR.: Objection. Misstates his testimony.
THE WITNESS: The large companies have agreed to restrictions on their marketing and other practices that small companies have not agreed to.
BY MR. PIUZE:
Q What large companies? What large companies?
A The signatories to the M.S.A.
Q Does that include R.J. Reynolds?
A Yes.
Q Do you know they were just got fined $15 million by a judge in Pomona for violating the M.S.A.?
A Yes. I think I did hear that.
Q How did you hear that?
A Reading it in the newspaper.
Q Do you know who Andrew Card is?
A Yes. But I can't recall right now. I know the name, but I'm forgetting who he is.
Q Someone told me the other day he is the chief

political advisor to the President of the United States.
MR. STOEVER, JR.: I think his title is Chief of Staff, which is different from chief political advisor.
MR. PIUZE: It is better.
MR. STOEVER, JR.: I don't know about that.
BY MR. PIUZE:
Q Do you know who he is now?
A I do recall.
Q Do you know what his past employment was?
A No.
Q Do you know Philip Morris employed him?
A That he was a Philip Morris employee?
Q Do you know if Philip Morris employed him?
A No. I don't know that.
Q Okay. What is the Zilker Theater? You smile. Did you perform at the Zilker Theater once?
A I have not heard of the Zilker Theater.
Q Do you think that if Phillip Morris had to pay significant punitive damages, that the Zilker Theater might suffer? Is that your testimony?
A I don't think that one individual smoker case will affect the Zilker Theater. But my opinion is that since cigarettes are a legal product, that the effect of imposing damages on the M.S.A. signatories will be to

increase the share of smaller cigarette companies, so that we're going to have the same number of cigarettes in the future but we're going to have different companies producing them.

http://legacy.library.ucsf.edu/tid/vvc37a00/pdf Courtesy of the Legacy Tobacco Documents Library http://industrydocuments.ucsf.edu/docs/kfxl0001

Q All of which has got to do with the Zilker Theater, which is my question.
A I have no opinion about the Zilker Theater.
Q How about the Virginia Waterfall International Arts Festival? Do you know what that is?
A No. I haven't been to that.
Q How about the Sloan-Kettering Memorial Hospital Lung Cancer Award? Do you know what that is?
A Yes.
Q Been there?
A No.
Q Know anyone that has been there?
A No.
Q So you purposely went looking for a list of charities where Philip Morris gave its money, right? So you could help testify for Philip Morris on this case; is that right?
A My purpose is not to testify on behalf of Philip Morris, but to testify about what they -- the effects of punitive damages are, given the situation in the cigarette industry today.

Q You -- it was your idea to look up this list of Philip Morris charities, right?
A Yes. I have another thing in here which is from Worth magazine that lists the largest corporate donors. And I realize from that, that I didn't know the identity of any of the recipients that Philip Morris -- this was the way that we found it, by looking on the web.
Q What's this document?
A The M.S.A.
Q Master Settlement Agreement?
A Yes.
Q What's this document?
A It looks like one of the bills from my firm that I was asked to produce.
Q Did you produce all of the bills?
A Yes.
Q How much have you billed?
A I don't know.
Q Did I give you -- have you produced all six bills?
MR. STOEVER, JR.: Asked and answered. I think you asked that and he said "yes."
THE WITNESS: These are all the bills.
///

BY MR. PIUZE:
Q Tell me what you billed.
A How much my firm has billed, correct?
Q Yeah.
A Let's see, I need to add some numbers. Do you want me to write on something?
Q Write on --
A That was --
MR. PIUZE: I was just remembering yesterday's deponent.
MR. STOEVER, JR.: Who was yesterday?
(A discussion was held off the record)
THE WITNESS: I get a total from December of last

http://legacy.library.ucsf.edu/tid/vvc87a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

year through today of approximately $121,000.
BY MR. PIUZE:
Q That your firm has billed on this case?
A That's right.
Q Okay. Can I have those? Plus, what's this?
A Those are notes that I made on the M.S.A.
Q Two pages' worth?
A Yes.
MR. PIUZE: This becomes Exhibit 2-A and B.
(Whereupon Exhibit 2-A and B was marked for identification.)
///

BY MR. PIUZE:
Q Pretty good handwriting.
A Thank you.
Q You're welcome. Now, we're on the last lap here, I do believe.
Tell us what that is, please, for the record.
A It's a decision in B.M.W. v. Gore.
Q That's the actual court decision?
A Yes.
Q Do you know --
A No, I'm sorry. It is the Supreme Court Economic Review. It's an article -- let's see -- it's a summary of the decision.
Q Who summarized it?
A It appears that it's Rubin Calfee and Grady.
Q Do you know who they are?
A No, I don't.
Q Did you read this?
A I don't recall whether I read this. I read a number of things about the B.M.W. v. Gore, but I don't recall who that is.
Q Do you know who Gore was?
A He was the plaintiff in the original case.
Q Do you know who he was?
A He was the owner of the car.

Q Yeah. Do you know who Gore was? Do you know what he did for a living?
A No.
Q Did Davis Boyce represent him?
A No. I didn't know that.
Q Okay. What's this one, please?
A A model of punitive damages in tort by Darryl Biggar, B-I-G-G-A-R.
Q Did you read that?
A Yeah. I looked through it briefly. Some of these I got by looking at footnotes and other articles and then getting copies of them. And I looked through them briefly to see if they had anything to add.
Q Where did that come from?
A And this one was -- I'm pretty sure came from a footnote from another article.
Q Where did that -- where was that published, please?
A Oh, International Review of Law and Economics.
Q Excellent.
A And the date is 1995.
Q Is Viscusi really lively at parties?

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of the Tobacco Industry Documents Library at UCSF http://tobaccodocuments.ucsf.edu/docs/kfxl0001

A I remember very little about him.
Q That could be an answer. What's the next document?

A Punitive Damages and the Economic Theory of Penalties by Keith Hylton, H-Y-L-T-O-N.
Q Where was that?
A Georgetown Law Review.
Q Year?
A There is a volume number, but --1998.
Q I thought you were familiar with -- what's that next one, please?
By the way, this last thing that we just talked about ever so briefly by Keith Hylton, did you read that?
A Once again, that came from a footnote from another article. And I just breezed through it to see if it would have something different on what I read before, and I don't recall anything different.
Q Okay. What's that?
A This is called Punitive Damages, Legal Hot Zones by David Partlett, P-A-R-T-L-E-T-T. It is from the Louisiana Law Review, 1996.
Q Thank you.
A And I don't -- again, it came from a footnote. I don't remember reading this one at all.
Q Okay. And that?
A The Securities and Exchange Commission Division of Enforcement. This is rules explaining

penalties and how they're calculated for violations of securities law.
Q Whose decision was it to look at that?
A Mine.
Q Why?
A I looked at a number of government agencies to see how they go about calculating compensatory damages for violations of various things, and then what type of penalties or punitive damages they have.
Q What type do they have?
A They use a trouble damage rule.
Q Okay. So I guess that brings us to this document. What's that?
A This is from the California Environmental Protection Agency, and it relates to news releases that they have. There are a number of them here that explain, again, penalties in some cases. They spell out the compensatory portion of it and the penalty or damages and punitive damages portions of it.
Q How do they figure out punitive damages, if they do?
A They, as I recall, they use a trouble damage rule for punitive damages or willful violations.
MR. STOEVER, JR.: Can we go off the record for a second?

(A discussion was held off the record)
BY MR. PIUZE:
Q Please tell us what that is. Describe it for the record.

http://legacy.library.ucsf.edu/tid/vtc07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/kfxl0001

A This is the some policies of CERCLA, C-E-R-C-L-A, which is the Superfund methods of calculating damages.
Q What is that?
A Printed out from the website of the Environmental Protection Agency.
Q What is their method?
A And it explains for -- explains how they calculate penalties under the Super Fund.
Q How?
A And I believe they use a trouble damage rule, is what I remember.
Q That?
A It's the Optimal Use of Fine and Imprisonment.
Q Who wrote it?
A By Polinsky and Shavell, July 1982, National Bureau of Economic Research.
It's another Polinsky and Shavell, Enforcement Costs and the Optimal Magnitude and Probability of Fines. That's -- let's see, I don't see a date on it -- September 1990.

This is a spreadsheet showing the allocation of California's M.S.A. payments to counties and municipalities by year.
Q How many pages?
A I only have two here. That is the whole thing. It is two pages.
MR. PIUZE: Let's mark that 3-A and B.
(Whereupon Exhibit 3-A and B was marked for identification.)
BY MR. PIUZE:
Q Why do you have this?
A To see how much California is going to receive and how much various places is going to receive.
Q How much is California going to receive?
A I can't recall the exact number. I think it is $20- or $25 billion. More than that.
Q How much?
A It is more than $25 billion.
Q How much?
A I don't recall.
Q What are the present cash value?
A What is the --
Q Present cash value.
A I don't know.
Q What was the present cash value of the Master Settlement Agreement?

A I don't know.
Q Any clue?
A You'd have to assume a discount rate and figure it out.
Q Have you?
A No.
Q Easy to do, right?
A Once you've assumed a discount rate, it's not a difficult calculation, right.
Q What discount rate are you using nowadays?
A Was I using where?
Q Nowadays.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/kfxl0001

A Oh, I don't know. I haven't thought about that. A discount rate is not the same for every problem. It depends on risks, for example. On the risks that the payment will not be received in the future.
Q Even I know that. These are just payments being made over a period of time. No inflation built into them.
A Some of them have been converted into bonds already. I could -- it would be possible to go and look at how the market has discounted them.
Q What discount rate are you using nowadays for

future payments?
A In what type of calculation?
Q To find the present cash value of a flat stream of future payments.
A A riskless future rate would be 5 percent today.
Q And?
A And I would have to think about whether that's the appropriate discount rate to use for the Master Settlement payments. As I said, there is an issue of risk.
If they are considered to be extremely certain, then you would use something close to a riskless rate. As I say, it's already been done in the bond market, so it would be possible to find out.
Q After Philip Morris agreed to pay its share of $206 billion, what happened to its profits?
MR. STOEVER, JR.: Objection. Vague as to time.
BY MR. PIUZE:
Q The same year they agree. It agreed?
A From '98 to '99, then; is that what you mean?
Q Sure.
A I'm not sure. I haven't looked at that.
Q It's not important to you?
A Not for the opinion that I'm giving here.

Q Okay. What about Philip Morris profits in any year since the Master Settlement Agreement? Have you looked at what Philip Morris profit margins are since then?
A I think they are higher now than they were a few years ago.
Q They were higher before the Master Settlement Agreement, aren't they?
A Yeah. It's possible they are.
Q Isn't that important for you to know?
A Not for the opinion that I'm giving here.
Q Okay. What about the fact that Philip Morris's Chairman Bible bragged about how the Master Settlement Agreement drove Philip Morris profits up. Are you aware of that?
A No.
Q Would it be important for you to know that?
A No. It doesn't affect the opinion that I've given.
Q Well, nothing affects the opinion that you've given. Nothing -- no variable of any kind that I have thrown into the mix today has affected your opinion,

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

correct?
MR. STOEVER, JR.: Objection. Misstates his earlier testimony.

THE WITNESS: I don't recall all the opinions that I've given today.
BY MR. PIUZE:
Q Can you think --
A I don't recall that I've said nothing affects my opinion.
Q Well, I'm asking you now. Has any variable that I mentioned anytime today affected your opinion that you've given?
MR. STOEVER, JR.: Objection. Asked and answered.
THE WITNESS: I don't recall.
BY MR. PIUZE:
Q Okay. Will you read this deposition before you testify at trial?
A Whose deposition?
Q Yours.
A This -- oh, yes, I will.
Q Okay. Why don't you -- when you read it through, keep track of how many opinions you changed during the course of the deposition as I changed variables, okay?
A Okay.
Q I will ask you at trial. Just to see if you are doing your homework, okay?
A Okay.

Q Will you promise not to charge $120,000 while you're doing that?
A Yes.
MR. STOEVER, JR.: Objection. Argumentative.
MR. PIUZE: I just did you guys a favor. He just promised.
MR. STOEVER, JR.: He is doing work for you, maybe we will bill you.
BY MR. PIUZE:
Q Okay. That, sir, what's that?
A Crime and Punishment and Economic Approach by Gary Becker, Journal of Political Economy.
Q Why do you have that?
A 1968.
Q Why?
A It's -- the general knowledge of the article is the founding piece of analysis for the economic model of damages as well as punitive damages.
Q Okay. Thank you very much. You read that?
A Yes.
Q Agree with it?
A Yes.
Q Nothing in there that you disagree with?
A Not that I recall.
Q Excellent. And that, what's that?

A Article from the San Diego Union Tribune.
Q How did you come upon the San Diego Union Tribune?
A By doing news searches for stories about

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

things like the Master Settlement Agreement.
Q What's that particular story about?
A Headline is: Lump Sum and Tobacco Deal to Aid Local Health Programs.
Q What's the date of that article in the San Diego Union?
A January 1, 2002.
Q Thank you very much. And the author, please.
A Oh, Luis Monteagudo.
Q Thank you. New one.
A Article from the Business Press California June 19, 2000.
Q Why --
A Headline: Healthcare Battle Smolders Over Plans for Tobacco Settlement.
Q Why did you bother printing this?
A It's another background reading that I did on the settlement and on the payments, and who's going to receive the payments.
Q Who's the author?
A Sean Faustina.

Q Did you see where it says, "California shares $24 billion"?
A Yes.
Q Do you think that's true?
A I could check it against this spreadsheet; so I don't know if it's correct or not.
Q Okay. Here's the document to which you were alluding in the past. What's that?
A This is Worth magazine, the 50 companies that gave the most.
Q To what?
A To charities.
Q Where did Philip Morris come in?
A Number three and number one in cash giving.
Q How much cash?
A Cash giving was for -- I'm looking for what year -- 1999, and the amount was $98 million.
Q Who was ahead of it?
A As far as I know, Bible was head of it.
Q I'm sorry, who was ahead of it?
A Ahead? Number one is Merck with $40 million of cash giving, and $108 million of in-kind giving.
Q And was Phillip at $98 million -- was there anything else besides the cash?
A Yes. It's also approximately $10 million of

in-kind giving.
Q And what was that?
A Let's see if it says here. It's probably food from Kraft.
Q Are you sure they weren't giving away cigarettes to kids?
A This is after the M.S.A., so I don't believe it would be. It said: "Doors of Hope Program put more than $2 million towards food, shelter and counseling." That might not have been in-kind. I don't know that it says.
Q And that?
A Los Angeles Times, October 13, 1999.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/kfxl0001

Q What is that about?
A By Byron Levine.
Q Levin.
A And headline is Philip Morris' New Campaign Echoes Medical Experts.
Q Okay. Let's make this Exhibit 4. How many pages is this article, please?
A It looks like three.
MR. PIUZE: Let's make it 4-A, B and C.
(Whereupon Exhibit 4-A, B and C was marked for identification.)
///

BY MR. PIUZE:
Q What are these?
A These are -- I don't know how to characterize them -- from antismoking groups. They're called "Alerts," and they are exhorting people to take various actions in opposition to the tobacco industry.
One is to write California legislature; one is to write Attorney Generals to enforce the Settlement Agreement; and the third one is, sort of, the cover page that has all the links to various actions that you can take.
Q "Smoke-Free Kids," is that what these are?
A Yeah. That's right. The website is Smoke-Free Kids.
Q January 11, 2002, correct?
A That's when it was printed out --
Q Oh, yeah.
A -- from the website.
Q You're right. So can you tell when that was put up there?
A Well, as of that date, these are the things that they had on their website.
Q I see, okay. That's good enough. So here all the Smoke-Free Kid things. There are three of them, right?

A Yes.
MR. PIUZE: 5-A B and C.
BY MR. PIUZE:
Q You ever heard of that organization before you got involved in that project?
A I don't recall.
Q Do you know what it does?
A It's an organization to protect kids from smoking.
Q Next. What's that?
A This is the Challenge of Punitive Damages Mathematics. Kip Viscusi, V-I-S-C-U-S-I, Journal of Legal Studies, June 2001.
Q When's the last time you saw Mr. Viscusi?
A Oh, I suppose 1986.
Q What's that?
A That's the year I left North Carolina.
Q What's that document I just gave you?
A This is a printout of some pages from General Motors' annual report.
Q Why?
A For 2001.

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Digitized by the Legacy Tobacco Documents Library. http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Why?
A It has information about G.M. subsidiaries, wholly-owned subsidiaries.

Q Why?
A If I'm asked any questions about Phillip -- the structure of Philip Morris having wholly-owned subsidiaries, the fact that Philip Morris, Incorporated, doesn't have a separate balance sheet, then I have examples of other large corporations that are structured that way.
Q What kind of subsidiaries does General Motors have?
A Hughes and G.M.A.C., various -- many, many other smaller ones, but those are the biggest ones.
Q What's that?
A This is the same thing for General Electric. A printout from the pages from their most recent annual report showing their subsidiaries.
Q What are their subsidiaries?
A G.E. Capital, they own a lot of smaller companies.
Q What's that, that I just put in front of you?
A This is for same thing -- for American Express.
Q Thank you. And that?
A And this one is for Dupont.
Q And that?
A These are all companies from the Dow 30,

Walt Disney and Johnson & Johnson.
MR. STOEVER, JR.: Can we go off the record for a second?
(A discussion was held off the record)
BY MR. PIUZE:
Q That, please.
A This is printout from Sanford Bernstein and Company, Incorporated, showing in 1998 through 2000 sales market share for cigarette companies, and it's copyright 2000.
MR. PIUZE: Let's make that Exhibit 6.
(Whereupon Exhibit 6 was marked for identification.)
BY MR. PIUZE:
Q That, what's that?
A It's a printout from the Federal Trade Commission Agency, charges R.J. Reynolds with causing substantial injury to the health and safety of children.
Q Okay. Why do you have that in there?
A This is from May 28, 1997.
Q Why is that here?
A I was printing out things related to the lawsuits by the Federal Government and the states. And I don't recall this one right now, but that's where it came from, doing a search for lawsuits against the tobacco companies.

Q I just handed you three documents that look like they may come from the Montana Attorney General.
A Yeah. The first two are from the Montana Attorney General's office.

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Support provided by the Tobacco Industry Documents Project at industrydocuments.ucsf.edu/docs/kfxl0001

Q Dates?
A February 14, 2000, and June 7, 2000.
Q Why do you have those?
A Demonstrating the oversight that attorney generals' offices have been maintaining since the M.S.A.
Q And the next one?
A And the third one is from the California Attorney General's office, and the date -- I can tell you the date that was printed out. I don't see a date. As far as printout, in January of this year. And it announces the tobacco litigation and enforcement section that was set up in the attorney general's office to monitor the tobacco industry.
Q That?
A This is a tobacco activism guide. It was printed out from the web from tobacco.org.
Q Why?
A Monitoring of the tobacco industry by activist groups and others.
Q Have you received any kind of assignment from Philip Morris or lawyers representing Philip Morris,

other than Bullock?
A No.
Q Are you soliciting any?
MR. STOEVER, JR.: I'm sorry, is there a question pending?
BY MR. PIUZE:
Q Are you soliciting?
A I'm sorry, no, I'm not.
Q Okay. What's that -- those?
A Printouts from various antitobacco groups, one is Ash.org. One is Pacificnet.net. It's call the "Safe Website." One is the National Center for Chronic Disease Prevention, Celebrities Against Smoking. And one is from Wilstar -- W-I-L-S-T-A-R -- .net. It's on antismoking material.
Q Great.
I'm pulling Exhibits 5-A, B and C, not going to include them.
I'm showing you -- are these three more from the same source, some more Smoke-Free Kids web printouts?
A Yes.
Q That you obtained for the same reason --
A Yes.
Q -- which was just to show that there are people watching?

A Yes. To show the monitoring of the industry.
MR. STOEVER, JR.: Are you replacing 5-A, B and C with the ones you just showed him?
MR. PIUZE: No.
MR. STOEVER, JR.: Okay.
MR. PIUZE: I feel there would be no good reason to have some but not the others, and to be fair.
BY MR. PIUZE:
Q Is that something from the Safe website, right?
A Yes.
Q Something in here from the Smoking Really Sucks website?

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Support http://industrydocuments.ucsf.edu/docs/kfxl0001

A Yes.
Q Have you heard Smoking Really Sucks before you got in this project?
A No.
Q Nor have I. Who's Attorney General Salazar? Do you know who this is, by chance?
A No.
Q From the State of --
A Minnesota.
Q -- Colorado.
A Colorado.
Q You got the right part of the country though.

North Carolina Health Access Coalition, what's that? Do you know what that is?
A I don't. Other than it came up from the search of these groups.
Q What's that, please?
A This is information from the California Attorney General's office. Whatever we can find on the monitoring the tobacco industry and a sample for Escrow Agreement for Nonparticipating Manufacturers.
Q What does that mean? Why would nonparticipating manufacturers have an Escrow Agreement? Which proves that, despite the fact I'm boring the hell out of myself as well as everyone else, I remember the boring question.
A Well, they are required to do so under the legislation that's been passed, and in just about every state. So all companies that sell cigarettes have to make certain payments into escrow.
Q That?
A This is an analysis of the M.S.A. prepared by Tobacco Control Resource Center at Northeastern University, March 24, 1999.
Q Do people have to sign any nondisclosure agreement to get in there?
A To get in where?

Q To their conference.
A I don't know.
MR. PIUZE: We were told on the night that we were there that there were cigarette industry spies there, and when you asked the question the other night, I was trying to guess who it was. You know what I'm talking about?
MR. STOEVER, JR.: Uh-huh.
MR. PIUZE: I think I know.
BY MR. PIUZE:
Q Whats that?
A It's an article from the Tobacco Industry Litigation Reporter, November 30, 1998. Entitled State Attorney General Settle with Tobacco Companies.
Q Thank you very much. That?
A Article entitled, Punitive Damages and Economic Analysis, Polinsky and Shavell. We had another version of this. This one is from the Harvard Law Review, 1998.
Q Did you actually read that?
A Yes.
Q When you think about how long this is, did you

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of http://tobaccoindustrydocuments.ucsf.edu/docs/kfxl0001

really read this?
A Several times.
Q Did you agree with that?

A Pardon?
Q Did you agree with that?
A I can't remember anything that I disagreed with.
Q How come you read this several times?
A Well, Polinsky and Shavell have contributed a lot to the analysis of the general model of penalties and fines, and their articles on punitive damages seems to be considered the defining one on the economic model of punitive damages.
Q Who says?
A Other economists, from citations in literature, general acceptance of it.
Q When did they become the big guns? When did they become generally accepted as the arbiters? Is that what they are, the arbiters?
A No.
Q What are they?
A Their work is highly respected. And in answer to your first question, over the last 20 years they've been writing about this.
Q Fine.
A This article is --
Q By the way, be that as it may, why would that lead you to read this particular article several times?

A Because it has a lot addressed to the question of -- punitive damages and the economic model and refers to a lot of earlier literature.
Q What's that?
A This is entitled An Ordinary Economic Rationale for Extraordinary Legal Sanctions by Haddock, H-A-D-D-O-C-K, McChesney and Spiegel from the California Law Review in January 1990.
Q Did you read that?
A Yes.
Q Did you agree with that?
A I certainly agree with parts of it.
Q I guess that means there are other parts you don't agree with.
A I don't think -- I don't recall anything that I specifically disagreed with. I think it pretty much fits within the literature on economic damages and the model that I described today.
Q Do you know that one of those people was a plaintiff expert in this case?
A Yeah.
Q Which?
A Mr. McChesney.
Q Do you know him?
A No.

Q Do you know where he lives?
A I believe he is at Northwestern.
Q You think he lives in Oak Park?
A He probably lives in [DELETED].

http://legacy.library.ucsf.edu/tid/vct07a00/pdf
Digitized by the Tobacco Industry Documents Library at UCSF http://industrydocuments.ucsf.edu/docs/kfxl0001

Q I don't know. Have you been told what he had to say in our case?
A No. I haven't seen his deposition.
Q No. Have you been told what he had to say?
A No.
Q Can you believe I'm doing this?
A Pick out the thickest ones first. This one is entitled Punitive Damages and Products Liability Litigation by David Owen, from the Michigan Law Review, June 1976.
Q Did you read it?
A I haven't read all of this one.
Q Anything in there that you disagree with?
A Not that I recall.
Q What did you take from the Michigan Law Review? Was it worth reading it?
A It's not on my "must" list. I'm not that familiar with it. This one is Punitive Damages Introduction and Synopsis by Harold See, S-E-E, Alabama Law Review, 1989.
Q Read that?

A No.
Q Okay. That one, read that?
A Fairness and Efficiency in the Law of Punitive Damages.
Q Who wrote it?
A Dorsey Ellis, Southern California Law Review, 1982.
Q Okay. Did you read that?
A I just glanced through it.
Q I notice that in the same issue of the Southern California Law Review, Robert Cooter had an article. Did you read his article?
A I believe I have that article.
Q Okay. Is that it?
A No. This is Civil Punishment and the Public Good by David Owen.
Q From the same?
A Same, Law Review, 1982.
Q And that?
A Deterrence and Punishment in the Common Law of Punitive Damages, a comment by Gary Schwartz.
Q Did you read Schwartz?
A Yeah. I looked through most of these.
Q Did you read Owens?
A I looked through it.

Q Did you agree with what they had to say?
A I didn't find anything to disagree with.
Q Next one is what?
A Punitive Damages and Enterprise Liability, George Priest, same Law Review, November of 1982.
Q Did you read it?
A Again, I glanced through it.
Q Did you agree?
A As far as I could tell.
Q Disagree with it?
A No. This is Problems in Assessing Punitive Damages Against Manufacturers of Defective Products by David Owen, University of Chicago Law Review, 1982.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of the Legacy Tobacco Documents Library at industrydocuments.ucsf.edu/docs/kfxl0001

Q Owens is a big name in this field, is he?
A He's written a lot about -- more related to products liability than the sort of basic economic model of damages.
Q Did you read that?
A I looked through it.
Q What's the difference between punitive damages and products liability in the basic economic model?
A Well, from what I recall, Owen just talks more about products liability issues. And what I meant was that Polinsky and Shavell are focused on the economic issues rather than the issue of one area like products

liability. Does that answer your question?
Q No, not really. What does he discuss in the products liability -- area of products liability?
A I don't recall it well enough to describe it.
Q It's okay. I guess I could read it.
A Do you want this one? Tobacco At the Crossroads, the Past and Future of Smoking Regulation in the United States by Jonathan Gruber, Journal of Economic Prospectives.
Q I apologize. Do you know who Gruber is?
A No. He's at M.I.T. I don't recall whether --
Q Did you read that?
A Yes.
Q Did you agree with it?
A Yes. As far as I recall I agree with it.
Q Okay. What's that next one?
A This is a listing of sponsorships and contributions by Philip Morris from the Internet. And I'm looking for the -- it's from Boston University, is the source of it.
Q You know what, I don't want to talk about it. Did you read it?
A I looked through it.
Q Is there anything in there?
A Well, I discovered that Philip Morris gave

money to the aid service center at my church. I didn't know that.
Q Anything else?
A No.
Q What church?
A All Saints in Pasadena, California.
Q Philip Morris gives money to your local church, literally?
A They have, according to that. This is from the Bond Buyer. It says: "Wither Tobacco Bonds."
Q Can you look at that and tell me about discount rates?
A I'll glance through here.
Q I bet you can.
A They have a 5.25 percent coupon rate. They are 30-year triple-A rated.
Q That is pretty close to being risk free, isn't it?
A Well, if they are selling at par, then they must be yielding 5 1/4 percent. I don't see that they are selling at par. Okay. I can't tell.
Q If the discount rate was 5 percent, what would

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf
Digitized by http://industrydocuments.ucsf.edu/docs/kfxl0001

the Settlement Agreement be worth? The
Master Settlement Agreement, $206 billion paid out how
many years?

A Over 25-or-so years.
Q Figure it 25 years, just to move our
conversation along. 25 years, $206 billion, 5 percent
cash discount rate, present cash value as well.
A I would need to do it on a spreadsheet because
the payments are not the same every year.
Q Well, just to humor me.
A $200 billion over 25 years is -- that's
$8 billion a year.
Q Just overhead then. That part, Mr. Stoever
got that in 20 seconds.
A Pardon?
Q I said Mr. Stoever had that part of the
equation 20 seconds ago.
A I'm thinking whether that's -- and then if you
capitalize that at 5 percent, about $160 billion.
Q Present cash value is $160 billion?
A Well, 25 years is close to a perpetuity. The
best I can do without a calculator is the perpetuity.
You divide 8 by .05, that's equivalent to 8 times 20,
8 times 10 is 80, 160. So I'd have to see what the
pattern of the payments is. That might --
Q Describe what that is, please.
A Symposium, Punitive Damages, Comment, Economic
Analysis of Punitive Damages. And it's comments by

Robert Cooter. And relative to your earlier question,
it appears he has a Ph.D. from Oxford. It doesn't say
if it's in economics.
Q Did you read that?
A Yeah.
Q Did you agree with that one?
A As I recall, I did.
Q Okay. What are these things, please?
A These are portions of the S.C.C. filings for
tobacco companies to see what kind of R and D they do;
one is for Star Scientific, one is for
Universal Corporation and one is for Dimon, D-I-M-O-N,
Incorporated.
Q Why are they in here?
A To see how much is being spent on research and
development by companies other than Philip Morris.
Q And what's here's? Another one, what's that?
A That's another one for Standard Commercial
Corp.
Q Okay. So what's the answer?
A From what I can see, the smaller tobacco
companies are spending little or nothing on R and D,
with the exception, possibly, of Star Scientific
spending $1 million or $2-.
Q So is that good, bad or indifferent?

A Well, that generally says, if the industry
becomes -- in the future is made up of a lot of small
companies, there would be a lot less R and D that is
performed.

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf
Support http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Is that bad?
A It is to -- for developing new and safer products.
Q Newer and/or safer products?
A Yeah. I guess it would include both.
Q Okay. That, please.
A Publicity and the Optimal Punitive Damage Multiplier by John Yun, Y-U-N, at the Federal Trade Commission, January 2001.
Q What does he have to say?
A He is starting out from Polinsky and Shavell, and I think Cooter, and some other people and Viscusi cites, and he is talking about other aspects of that same model of damages of punitive damages. So it's extensions of the punitive damages model.
Q What does John Yun have to say about that, please?
A The issue is whether the probability that's used to get the punitive damages should change, based on changing publicity or knowledge in the marketplace. And he agrees with Polinsky and Shavell and others that it

should -- if publicity causes there to be more lawsuits, then that should cause the damage multiplier to change over time.
Q To what?
A To whatever the new probability is, based on the new information.
Q Now, is probability going to be higher or lower?
A In the case they're talking about would be that, if publicity causes there to be more lawsuits, increasing the probability of the defendant paying out more damages, and therefore the multiplier should go down as the probability goes up.
Q Down to what?
A To whatever is calculated in the new environment.
Q What is that?
A This is a listing of the wholesale price of a pack of cigarettes, 1955 to 2001. Comes from "The Campaign For Tobacco Free Kids." And that I did a calculation of how much Philip Morris' profits would have been by selling someone, such as Betty Bullock, two packs a day starting in 1955, assuming a 20 percent profit rate and then adding 5 percent interest and accumulating the profits.

MR. PIUZE: This is a test. Let's hear it. Please repeat it. Read it.
(The requested testimony was read back)
BY MR. PIUZE:
Q Why do you assume the 20 percent profit?
A Why am I assuming a 20 percent profit? For a marginal sale, to one individual or marginal sale of another unit, generally you try to use something like a gross profit rate. And 20 percent is -- I don't know exactly what -- I certainly don't know what it was over the years. This is a fairly generous rate and it gives me a benchmark to either decrease it to 10 percent or increase it to 30 percent.

http://legacy.library.ucsf.edu/tid/vvc97a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

Q What do you mean, "generous"?
A Generous relative to the gross profit rate in most industries.
Q As it turns out, the cigarette industry is extremely profitable percentage-wise, isn't it?
A Right.
Q And as it turns out, the profits do run 20 percent or above, don't they?
MR. STOEVER, JR.: Objection. Lacks foundation.
THE WITNESS: Yeah. I wouldn't agree with that, unless I did a study of what profit rates were in the cigarette industry. So I don't know. I'm using as a

benchmark 20 percent gross profit which is, you know, is in the ballpark for a manufacturing like this.
BY MR. PIUZE:
Q What do you mean by "like this"?
A In my experience of looking at a lot of income statements of a lot of companies and industries, 20 percent is kind of an average gross profit rate.
Q After all of the work you've done in this case, don't you know that the tobacco industry's percentage of profit is way higher than average?
A Well, I think this is way above average because it doesn't take taxes out. And I've also assumed everything on the high side.
Q What's the answer to my question?
A Whether I know that the tobacco industry is profitable?
Q No. After all of the work that you've done on this case, don't you know that the tobacco industry's percentage of profits is extremely high compared to most businesses?
MR. STOEVER, JR.: Objection. It's a different question. Lacks foundation.
THE WITNESS: No. I haven't looked at that.
BY MR. PIUZE:
Q Okay. So anyway, what did you figure? In

this document that I'm going to mark as replacement 5-A and B.
(Whereupon Exhibit 5-A and B was marked for identification.)
BY MR. PIUZE:
Q How's that? Is that okay? What did you find out?
A The total that I came up was $7,000. In the neighborhood of $7,000. $7,176.
Q So Philip Morris made $7,000 profit off of Betty Bullock?
A I would say something in that neighborhood, yeah.
Q Okay. So what --
MR. STOEVER, JR.: Objection. Vague and ambiguous.
BY MR. PIUZE:
Q What's the significance, if any, of that piece of information?
A In the economic literature on punitive damages, there is often a distinction drawn between the damages to the plaintiff versus the gain to the defendant.

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

Q Okay.
A And in this case, in a case such as cigarettes where the damages are measured in terms of damages to

someone's health, they're not directly related to the gain that the defendant made by selling the product to them. So making a calculation to figure out just what was the gain to the defendant by selling cigarettes to the plaintiff, and just to verify that it was not greater than the losses that the plaintiff will have, and it's obvious that they're not.
Q Philip Morris products gave the plaintiff a fatal disease for a lousy $7,000 profits?
MR. STOEVER, JR.: Objection. Lacks foundation.
BY MR. PIUZE:
Q Is that right?
MR. STOEVER, JR.: Same objection. Calls for speculation.
MR. PIUZE: Go ahead.
MR. STOEVER, JR.: Assumes facts not in evidence.
THE WITNESS: What the -- I don't understand the question.
BY MR. PIUZE:
Q What don't you understand about that question?
A The trial hasn't occurred yet.
Q So what?
A So I don't know what your question means.
Q Why not? What does the trial hasn't occurred, what does that have to do with what my question means?

A I don't know what is going to be said at the trial.
Q About what?
A About Betty Bullock's disease.
Q Small cell lung cancer is only caused by smoking; have you ever heard that?
A If I have, I don't recall.
Q Assuming small cell lung cancer is only caused from smoking -- Philip Morris is not going to contest that at this trial; Philip Morris is not going to produce experts to say that she got lung cancer from Martians, unknown sources, radon gas, or candy bars; Philip Morris is going to say she got it from smoking cigarettes. Just assume all that's true.
Now, can you answer my question?
A The answer is --
MR. STOEVER, JR.: Same objections.
THE WITNESS: The answer is that that's my estimate of the gain from selling cigarettes to an individual.
And so the answer is yes. That's what the calculation is. I don't know the question to be going beyond that. Just repeating what I already said.
BY MR. PIUZE:
Q Are you of the mind that the tobacco companies are defending these tobacco lung cancer cases on the

basis that the individual person just happened to smoke and just happened to have lung cancer, but in this particular case, the lung cancer wasn't related to smoking?

http://legacy.library.ucsf.edu/tid/vvt07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

MR. STOEVER, JR.: Objection. Lacks foundation. I don't think this witness has the ability to say how the tobacco industry or Philip Morris is defending these cases.
MR. PIUZE: Nor did I ask him.
MR. STOEVER, JR.: That's what you asked.
THE WITNESS: That wasn't my impression, that they were defending them that way, no.
BY MR. PIUZE:
Q Do you know if they defended them that way? Do you know if the tobacco industry has defended smoking/lung cancer cases that way?
MR. STOEVER, JR.: Objection. Lacks foundation; it's outside the scope of this witness' expertise.
THE WITNESS: I don't know.
BY MR. PIUZE:
Q Have you ever heard that?
A No. I'm not familiar with arguments that are made in these cases.
Q Okay.
A Other than what I read in the testimony from

that I talked about earlier.
(A discussion was held off the record)
BY MR. PIUZE:
Q How come you chose these Philip Morris documents that are sitting on the table to stuff your box with, please?
A Well, I asked my staff to print out what was on their website regarding health issues. And there is no particular reason for this Fact Book on Philip Morris, but we printed out various things from their information about Philip Morris as well as what information they had on health issue.
Q This Fact Book is the 2001 Fact Book?
A Yes.
Q What about the others?
A They are the result of opening various links on the website under the heading of "Tobacco Issues." And so, as I said, I wanted to see what they had out there.
Q And these two?
A You mean this over here?
Q Yeah.
A Okay. This is -- it's from the section of their website and entitled "About Philip Morris," and it goes through the brands of the major companies. And

then it has more information on smoking and health, youth smoking and prevention. So the rest of it is additional things on smoking and health.
Q Have you ever heard of Johnny Roventini?
A I'm not sure. I don't recall.
Q Here he is. Do you recognize him?
A No.
Q Do you remember the television ads?
A Yes.
Q Or some very short person in a bellman's uniform would say "Call for Philip Morris." Do you remember that?
A Yes.

http://legacy.library.ucsf.edu/tid/vct07a00/pdf
Support http://industrydocuments.ucsf.edu/docs/kfxl0001

Q He's the actor who did it. Johnny Roventini. He was like four feet tall.
Do you know why in the Fact Book, Philip Morris would tell us the year that Johnny Roventini retired, but failed to tell us in the year that its C.E.O. lied before Congress -- that the C.E.O. had appeared before Congress?
MR. STOEVER, JR.: Objection. Assumes facts not in evidence; it's argumentative; lacks foundation.
THE WITNESS: I don't know.
BY MR. PIUZE:
Q Can you think of any reason in the world why

they would tell us in 1974 that the bellman who used to advertise Philip Morris cigarettes on television retired, but in 1994 when the C.E.O. testified before Congress, Philip Morris failed to mention it?
MR. STOEVER, JR.: Objection. Argumentative; assumes facts not in evidence; it's beyond the scope of this witness' expertise.
THE WITNESS: I don't know.
BY MR. PIUZE:
Q Can you tell me why, in 1994 when the C.E.O. testified before Congress, that he said smoking was not addictive and didn't think it caused lung cancer? That wasn't mentioned in here? Phillip Morris did take the time to tell us that Tombstone Frozen Pizza was expanded nationally?
MR. STOEVER, JR.: Objection. Assumes facts not in evidence; beyond the scope of this witness's expertise.
THE WITNESS: I don't know.
THE REPORTER: The next Exhibit Number is 7.
MR. PIUZE: Yeah. You read my mind. Some of these have to be close at hand during the testimony. Let's make this Exhibit 7.
(Whereupon Exhibit 7 was marked for identification.)
BY MR. PIUZE:
Q Tombstone Frozen Pizza, indeed.

Sir, have you told me about all of the opinions that you intend to give at trial?
A I believe I have. I expect that I'll be asked to respond to Dr. McChesney and Mr. Johnson.
Q If the present cash value of the profits that Philip Morris has made selling cigarettes since it knew that the cigarettes caused lung cancer and other serious diseases and since it embarked upon the cover-up of those, equaled $100 billion, do you think $100 billion as a give-back now would be an appropriate amount for punitive damages?
A No.
Q Why?
A Because the sale of cigarettes is legal and the conduct that's been alleged is alleged to have had the result of, I guess, inducing some people to smoke who otherwise wouldn't have smoked; and, therefore, the conduct does not cover, as I understand it, the sale of all cigarettes by Philip Morris.
Q What conduct?
A Pardon?
Q What conduct?

http://legacy.library.ucsf.edu/tid/vvc07a00/pdf
Digitized by the Legacy Tobacco Documents Library. industrydocuments.ucsf.edu/docs/kfxl0001

A I'm really sorry, I couldn't hear you.
Q What conduct?
A The conduct alleged, for example, in

Betty Bullock's Complaint or in the lawsuits leading up to the M.S.A. I don't understand those to include damages for the sale of all cigarettes by the entire industry or all of the cigarettes sold by Philip Morris.
Q What do you understand it to include?
A That is the allegations are that, as a result of Philip Morris's conduct -- I should also add, as a result of reading Betty Bullock's deposition as I understand what she's claiming -- that some people wouldn't have smoked and, therefore, wouldn't have gotten sick from cigarettes, but not that all people smoke cigarettes because of the conduct of Phillip Morris.
Q Is that your whole answer?
A Yes.
Q Have you attempted to find out what percentage of people would not have smoked but for the conduct of Philip Morris?
A No.
Q Why not?
A I haven't been asked to do that for this assignment, and I also don't know that it would be possible to do it.
Q If that is the one criticism of the method that I mentioned to you that you chose to air here as

your sole answer, why haven't you attempted to remedy criticism?
MR. STOEVER, JR.: Objection. Misstates his earlier testimony. He said that is the one criticism.
If you understand the question, please answer it.
THE WITNESS: I haven't seen any information that would allow me to do it.
BY MR. PIUZE:
Q Have you looked?
A Well, in my looking at what data is available for the industry, I haven't found anything that would allow that kind of calculation to be done.
Q Have you looked? Have you specifically looked for that information that will allow you to do that kind of calculation?
A I haven't specifically looked for that information, no.
Q Okay. Okay. Now, as an economist who does litigation, you are all the time trying to extrapolate or interpolate numbers in order to get some information or a handle on some information that doesn't already exist, correct?
MR. STOEVER, JR.: Objection. Vague and ambiguous.
THE WITNESS: I do extrapolations and so forth, yes.

BY MR. PIUZE:
Q Can't you do that for the problem you just posed here?
A No. As I said, I haven't seen anything that

http://legacy.library.ucsf.edu/tid/vtc07a00/pdf
Digitized by the Legacy Industry Documents Library - http://industrydocuments.ucsf.edu/docs/kfxl0001

would bear on that percentage and would allow me to do that sort of calculation.
Q Okay. Don't you know there are people in this case, this very case, hired by Philip Morris, hired by the plaintiff, who have interviewed people on the issue of "Would you have smoked, had you known?" Are you aware of that?
MR. STOEVER, JR.: Objection. Misstates the record; assumes facts not in evidence.
BY MR. PIUZE:
Q Are you aware of that?
A I'm not familiar with what you are talking about.
Q What if 72.3 percent of the people, as an example, say that Philip Morris had come clean and fessed up to what it knew, they wouldn't have smoked; would that give you a way of alleviating the problem that you just mentioned?
A I don't know. Not being a survey expert or having any expertise as to whether that would be the way to get the number, I don't know.

Q Assuming that number to be true, wouldn't that alleviate the problem you just mentioned?
MR. STOEVER, JR.: Objection. It's beyond the scope of this witness' expertise.
THE WITNESS: No. I don't think it would.
BY MR. PIUZE:
Q Why not?
A Because that would tell you the percentage of people, arguably, would not have smoked.
Q Right.
A Doesn't tell you, then, some of those people didn't get sick.
Q Right.
A So once again, we don't know what percentage of Philip Morris's profits would be related to whatever allegations are.
Q Related to what? The number of people who got sick but wouldn't have continued smoking if they knew, right? That's what you need to know, right?
A But would --
Q Would not have continued smoking.
A -- continued to smoke.
Q If Philip Morris would not have misled, that is the thing you are looking for, correct?
MR. STOEVER, JR.: Objection. Misstates his

earlier testimony.
THE WITNESS: I don't know. I'd have to look at what the allegations were and --
MR. PIUZE: Okay. Can you look -- I got no further questions. Here's -- unless you do?
MR. STOEVER, JR.: I have none. Thank you.
MR. PIUZE: Would you like to volunteer anything?
THE WITNESS: No, I'm fine.
MR. PIUZE: Economically speaking, that's not a good idea to volunteer stuff.
For this particular deposition, I want this entire transcript bronzed, and I'd like you to send it back to the University of Chicago, okay?

http://legacy.library.ucsf.edu/tid/vct07a00/pdf Courtesy of http://industrydocuments.ucsf.edu/docs/kfxl0001

MR. STOEVER, JR.: Do you want me to recite the stipulation?

MR. PIUZE: The court reporter is relieved of any of her residual obligation under the Code of Civil Procedure; if she will send the original of this deposition -- to whom?

MR. STOEVER, JR.: To me, please.

MR. PIUZE: And I will stipulate this witness can sign the deposition in a time and place of his choosing, if Mr. Stoever agrees, in turn, to advise me within 30 days of Stoever's receipt of the deposition from the court reporter of any changes or additions or

corrections; if I'm not so notified, I can use any copy as if it's a signed, sealed original; and the defense gets to keep custody of the transcript.

MR. STOEVER, JR.: So stipulated.

(A discussion was held off the record)

MR. PIUZE: The court reporter is indulging me now back on the record.

Is this the videotape that you produced that we mentioned earlier?

THE WITNESS: Yes.

MR. PIUZE: What I'd like to do is have the court reporter put an official sticker on this so we can identify it later on, but I'd like to keep custody of it. Is that okay with everybody?

THE REPORTER: The next exhibit number is 8.

MR. PIUZE: Thank you.

(Whereupon Exhibit 8 was marked for identification.)

(The deposition proceedings concluded at 3:44 p.m.)

PENALTY OF PERJURY CERTIFICATE

I hereby declare I am the witness in the within matter, that I have read the foregoing transcript and know the contents thereof; that I declare that the same is true to my knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare being aware of the penalties of perjury, that the foregoing answers are true and correct.

Executed on the _____day of_____ 2002, at_____, California.

_____
JOHN S. HEKMAN, PH.D.

http://legacy.library.ucsf.edu/tid/vct07a00/pdf
Support provided by the Tobacco Industry Documents Library at the University of California, San Francisco. http://industrydocuments.ucsf.edu/docs/kfxl0001

http://legacy.library.ucsf.edu/tid/vcf07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/kfxl0001